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## Deviants of Great Potential: Images of the Leopold-Loeb Case

John Carl Fiorini

*College of William & Mary - Arts & Sciences*

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**Deviants of Great Potential:  
Images of the Leopold-Loeb Case**

**John Carl Fiorini**

**Reston, Virginia**

**Bachelor of Arts, Mary Washington College, 2002  
Master of Arts, The College of William & Mary**

**A Dissertation presented to the Graduate Faculty  
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Doctor of Philosophy**

**Lyon G. Tyler Department of History**

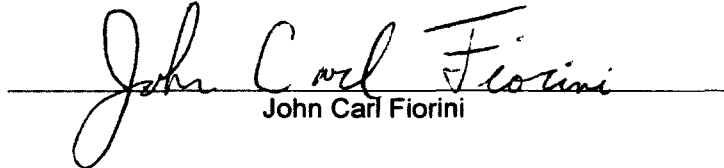
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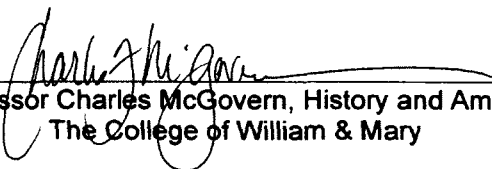
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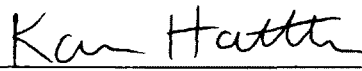
  
John Carl Fiorini

Approved by the Committee, January, 2013

  
Committee Chair  
Associate Professor Leisa Meyer, History and American Studies  
The College of William & Mary

  
Associate Professor Charles McGovern, History and American Studies  
The College of William & Mary

  
Associate Professor Frederick Corney, History  
The College of William & Mary

  
Professor Karen Halttunen, History  
The University of Southern California



## ABSTRACT

**Deviants of Great Potential analyzes the 1924 Leopold-Loeb case as a cultural narrative with important effects on the marginalization of same-sex sexuality in men throughout the twentieth century and into the twenty-first. After Chicago teenagers Nathan Leopold and Richard Loeb were arrested for the United States' first nationally recognized "thrill killing," the apparently motiveless murder of fourteen-year-old Robert Franks, the Leopold-Loeb case became an instant cause célèbre. The popular fixation on the case continued in the decades after 1924, as journalists and behavioral scientists treated it as a precedent for understanding a certain type of crime and criminal. Meanwhile – especially after World War II – a slew of novelists, playwrights, and filmmakers offered their own interpretations.**

**Through the intertwining representations of the case in fiction and nonfiction, the Leopold-Loeb case became a cautionary tale about the dangers of "abnormal" sexuality in men. Narratives of the case portrayed Leopold and Loeb's sexual relationship as the sine qua non of Robert Franks's murder, and the case thereby came to represent same-sex sexuality as a threat to moral order and public safety, and to serve as a counterexample of the traits "normal" men should or should not exhibit.**

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## INTRODUCTION

“Narratives are necessarily emplotted in a way that life is not.”

– Michel-Rolph Trouillot<sup>1</sup>

The “crime of the century” was only the beginning.

On May 21, 1924, two Chicago teenagers named Nathan Leopold and Richard Loeb tried to commit the perfect crime. They abducted and murdered Robert Franks, 14, after planning the crime carefully but choosing Franks for its victim almost randomly. They then tried to ransom Franks to his wealthy father for \$10,000 under the guise that he was still alive. Franks’s body was identified before the ransom was paid, and forensic evidence led law enforcement officials to take Leopold in for questioning eight days after the murder. Leopold invoked Loeb as an alibi witness, but Loeb confessed on May 31 after investigators disproved his story, and Leopold followed suit the same day. Neither young murderer needed the money, nor lacked for opportunities in life. They were both the children of millionaires, and in spite of their youth – Leopold was 19, Loeb, 18 – were pursuing post-graduate degrees. The kidnapping and murder were a game for them, a way to prove their superiority over the rest of humanity and live out a criminal fantasy. Leopold and Loeb had, in other words, committed the United States’ first nationally recognized thrill killing.

During the timespan between the discovery of the body and Leopold and Loeb’s arrests, the Franks murder case had triggered a panic in Chicago about the criminal fiend(s) on the loose in the city. After Leopold and Loeb’s confessions, a

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<sup>1</sup> Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon, 1995), 6.

national panic took root over the possibility that Leopold and Loeb represented a society in moral decay, a fear which created in the public an intense desire to understand the two young murderers while still condemning them. After Leopold and Loeb pled guilty in the hope of avoiding the death penalty, legendary defense attorney Clarence Darrow played into this desire at their sentencing hearing. He called a team of psychiatrists who used new and highly controversial methods of psychoanalysis to assess Leopold and Loeb and argue that subconscious influences mitigated the two teenagers' responsibility for their actions such that the death penalty was inappropriate. For four months, the public followed the proceedings with fascination as a Chicago court heard evidence on the very nature of crime and human behavior. At the end of the hearing, the presiding judge sentenced each of the two defendants to life plus ninety-nine years in prison, sparing their lives.

The circumstances of Leopold and Loeb's crime were certainly shocking, but that their case triggered a *cause célèbre* in its own time did not necessarily mean the public's fascination with it had to endure for generations. The Franks murder case might have ended in 1924 as a brief affair that affirmed the efficacy of the Illinois criminal justice system. After all, Leopold and Loeb were caught fewer than two weeks after their crime, and led law enforcement to enough corroborating evidence to negate any reasonable doubts as to their guilt. Despite Darrow's and much of the psychiatric community's best hopes, Leopold and Loeb's defense did not fundamentally change the way crimes were adjudicated in America. And although the defendants avoided the death sentences that many people thought they deserved, they hardly got off scot-free. Having committed a murder in May, they began their prison

sentences in September. Loeb was murdered in prison in 1936. Leopold served more than thirty-three years before he was paroled in 1958, when he was fifty-three years old. Once the sensationalism of the moment had passed and Leopold and Loeb went to prison, the case could have drifted into obscurity, becoming an antiquarian curiosity of interest only to historians and true-crime buffs.

Instead, the Leopold-Loeb case has been with us ever since.<sup>2</sup>

My dissertation, *Deviants of Great Potential*, examines the discourse of the Leopold-Loeb case fiction and nonfiction since 1924 in order to understand how a single, senseless crime that occurred nearly ninety years ago has inspired a conceptual framework for interpreting and representing a certain type of crime and criminal that continues to thrive today, and to what effects. A subject of enduring fascination, it has become a staple of true-crime and famous trials anthologies, inspired a distinct fictional convention, and been the subject of monographs, documentaries, primary source readers, and at least two books aimed at late grade and middle school students.<sup>3</sup> I argue that the fictional and nonfictional representations of Leopold-Loeb

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<sup>2</sup> A note on terminology: In his study of Sacco and Vanzetti, historian Moshik Temkin argues for perceiving his subject in two ways, as a “case” and an “affair.” The former, he argues, was a criminal legal proceeding, while the latter term denotes the enduring controversy over the case that occurred outside of the courtroom in American and international circles and went on for decades. Temkin draws an important distinction, but one that would be problematic in my own approach. I do not see an accurate means of separating the legal and extralegal discussions of Leopold-Loeb in 1924, and in the decades after 1924, though I believe the “case” to be a fluid concept that encompasses a range of perceptions, my subjects still conceived of Leopold-Loeb as a discrete event or set of events situated at a specific moment. Throughout this project, I therefore refer to Leopold-Loeb as a case, denoting the entire set of developments, circumstances, and characteristics that defined Leopold-Loeb as a historic event. Moshik Temkin, *The Sacco-Vanzetti Affair: America on Trial* (New Haven, CT: Yale UP, 2009), 2.

<sup>3</sup> For a partial list of nonfiction works about the Leopold-Loeb case, see bibliography. Simone Payment’s *The Trial of Leopold and Loeb* lists itself as for readers 10 and up, while Alan Koopman’s *Leopold and Loeb: Teen Killers* is for readers 14 and up. Simone Payment, *The Trial of Leopold and Loeb: A Primary Source Account*, Great Trials of the Twentieth Century (New York: Rosen Publishing Group, 2004); Andy Koopman, *Leopold and Loeb: Teen Killers*, Famous Trials Series (San Diego: Lucent, 2004).

have combined to create a collection of uncritical assumptions and preconceptions about the case, its characteristics, and its meaning based on cultural memory. Those ideas about the case then transferred to other applications even as the two men who inspired them, and the subjective process that produced them, have become more obscure. In this manner, Leopold and Loeb became and continue to be enduring symbols of certain supposed threats to social and/or moral order, even as their functions as symbols have grown increasingly less obvious since about 1960.

In particular, the case has had an important but heretofore unappreciated impact on popular perceptions of same-sex sexuality in men. It became an important part of a continuing twentieth century project of constructing normativity and homosexuality in opposition to one another. Leopold and Loeb's story, as it was culturally constructed and revised, connected same-sex activities among men with an entire range of thoughts and practices that all corresponded to a dangerous sort of abnormality in men, a form of connection that sociologist Stuart Hall and his collaborators call "convergence."<sup>4</sup> The case was thereby molded into evidentiary reinforcement for the conflation of acts performed between consenting adults and acts of violent predation, implying that Leopold and Loeb's sexual relationship demonstrated a specific kind of antisocial personality which manifested itself in Robert Franks's murder.

This, then, is not a history of the events of 1924. It is a history of how the stories of those events have been told and retold, how those stories have shaped people's "knowledge" of a distinct type of crime and criminal, and the political and

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<sup>4</sup> Stuart Hall, et al., *Policing the Crisis: Mugging, The State, and Law and Order* (London: MacMillan, 1978), 226.



social consequences of that knowledge. It builds on the growing body of scholarship that directly or indirectly draws from Michel Foucault's arguments about discourse, power, and sexuality to – in the words of one historian – “analyze cultural narratives as political interventions embedded in concrete, material institutions... This method refuses the separation of social life ('reality') from representation ('myth') or ('stereotype')” [parentheses in original].<sup>5</sup> Events are social constructions; people consciously or unconsciously perceive, articulate, and assign significance to them. One of the chief mechanisms through which they do so is narrative, an endeavor that historian and theorist Hayden White calls a “process of sense-making.”<sup>6</sup> Accepting, as White does, that “the aged Kant was right...; we are free to conceive 'history' as what we please, just as we are free to make of it what we will,” I seek to understand how the case has been conceived, what meanings people have found or created in it, and what effects it has had.<sup>7</sup> I begin with the social and cultural construction of Leopold-Loeb as an event in 1924, and then see how later interpretations built on and contested that construction to remake the case for new historical contexts.

This approach to the Leopold-Loeb case is not new. As early as 1958, cultural critic Leslie Fiedler observed the different ways in which people framed the Franks murder to suit their own perceptions and classify it as an event with certain meanings.

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<sup>5</sup> Lisa Duggan, *Sapphic Slashers, Sex, Violence, and American Modernity* (Durham: Duke UP, 2000), 4; Michel Foucault, *The History of Sexuality, Volume I: An Introduction*, trans. Robert Hurley, Vintage books ed. (New York: Random House, 1978, 1990); Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (New York: Pantheon Books). For other examples, see Judith Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: U of Chicago P, 1992); Gail Bederman, *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: U of Chicago P, 1995).

<sup>6</sup> Hayden White, “Historical Text as Literary Artifact,” *The Writing of History: Literary Form and Historical Understanding*, ed. John Canary and Henry Kozicki (Madison: U of Wisconsin P, 1978), 49.

<sup>7</sup> Hayden White, *Metahistory: The Historical Imagination in Nineteenth-Century Europe* (Baltimore: Johns Hopkins UP, 1973), 433.

The elements in play in 1924, Fiedler argues, created an assortment of battles among groups to define the case. All the participants agreed that the case was a significant event that demonstrated certain points, but they argued over the characteristics and nature of that event, and thus over what its lessons were. Similarly, Fiedler observes that the case's narrative – and the arguments over it – were being adapted toward contemporary issues during his own time, showing part of the mutability in the case that facilitated its enduring cultural relevance.<sup>8</sup>

In 1993, Paula Fass historicized the study of the case's importance and emphasized the role of narrative in it in her article "Making and Remaking an Event: The Leopold-Loeb case in American Culture." Fass jointly analyzes the legal and journalistic responses to the case, taking a historical approach toward uncovering the processes through which certain characteristics and narratives of it became dominant between 1924 and the late 1950s. For Fass, Leopold-Loeb was made into a parable about normality and childhood in 1924, but in the 1930s and 1950s became defined by its connections to sexuality and psychology.<sup>9</sup> David Churchill takes a very similar approach to Fass, but challenges her conclusions about sexuality. He argues that Leopold-Loeb was from its inception a parable about the threats posed by homosexual men: "The murder of Bobby Franks in its narrative retelling has proven to be a powerful instrument in the representational construction and reification of

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<sup>8</sup> Leslie Fiedler, "Leopold and Loeb: A Perspective in Time," *No! In Thunder: Essays on Myth and Literature*, (Boston: Beacon Press, 1960). Originally published as "Final Thoughts on the Leopold Case," *New Leader* 41 (17 Nov. 1958).

<sup>9</sup> Paula Fass, "Making and Remaking an Event: the Leopold and Loeb Case in American Culture," *Journal of American History* 80, no. 3 (Dec. 1993).

stereotypes. The biographies of the murderers...were used to link homosexuality with murder and pathology.”<sup>10</sup>

My own arguments revise these historians’ work. Like Fass, I see the case in 1924 as an expression of cultural anxieties rooted in the specific historical context of the 1920s, a time when modernity and the slew of social changes that accompanied it found articulation in a new worldview. Also like Fass, I approach the case as a forum through which people – including lay persons, behavioral experts, and journalists – used Leopold and Loeb as foils against which to delineate certain boundaries of normativity in the modern era. But like Churchill, my own work emphasizes the case’s function as a story about the dangers of same-sex sexuality in men. Leopold and Loeb came to define a personality type, such that “[the] historical process of narrative representation allowed law enforcement officials, journalists, and even popular writers to connect the events of the murder to larger social categories and groups.”<sup>11</sup> However, I conceive of the case’s narrative more broadly than my predecessors, both in my chronological scope and in the media I study. Most histories of the case pay progressively less attention to developments after 1924, if they discuss those developments at all. Both Fass and Churchill end their works with the 1950s, when there was renewed fascination with Leopold-Loeb as a historic event. I devote only one chapter to 1924, and the remainder of the project to subsequent developments in the case’s narrative.

I approach the 1950s as a turning point for the case’s narrative, not an ending point. Leopold-Loeb’s assumption of significance in the twenties, a decade that was

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<sup>10</sup> David Churchill, “Queer Histories of a Crime, Representations and Narratives of Leopold and Loeb,” *Journal of the History of Sexuality* 18, no. 2 (May 2009), 323.

<sup>11</sup> Churchill, 323.

itself important to the genesis of modernity, endowed the case with an element of enduring relevance. While Leopold-Loeb's function in American life has been less obvious since the 1950s, in the decades since that time its narrative has wielded at least as much influence as it did in the preceding decades, if not more. Fass and Churchill devote some attention to Alfred Hitchcock's film *Rope* (1948) and Meyer Levin's thoroughly researched *roman à clef* of the case, *Compulsion* (1956), but I argue that Leopold and Loeb's relationship with fiction goes much deeper.<sup>12</sup> Since the 1950s, the case's narrative – and consequently its capacity to affect perceptions of same-sex sexuality – has been heavily intertwined with fictional media, including novels, films, and plays. These fictionalizations claimed varying levels of relation to the historical Leopold-Loeb case, but they all perpetuated and adapted elements of its narrative, creating a new forum for the case's discourse that affected popular perceptions of the “real” case and its significance. They have also helped to spread a cultural awareness of the Leopold-Loeb style crime even among people who are not familiar with the historic event.

The properties of narrative have become an increasingly popular subject for historical scholarship, particularly over the last twenty years. Hayden White prefaced this wave of interest in the 1970s. For White, events provide the elements of a story, but the historian and his or her audience give those events form and meaning through a mutual act of arranging and classifying events into a coherent and comprehensible account. The historian, in selecting how to arrange, interpret, and present his or her

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<sup>12</sup> I intend to treat Patrick Hamilton's 1929 play *Rope* as the first fictionalization of the case, but the number of fictionalizations, and the explicitness of their efforts to explain the crime's cause, increased dramatically in the postwar era beginning with Alfred Hitchcock's 1948 film adaptation of *Rope*. Patrick Hamilton, *Rope: A Play*, 1985 ed., (London: Constable and Company, 1929, 1985); Alfred Hitchcock, *Rope*, 80 minutes (United States: Warner Brothers, 1948), film.

subject, emplots it with an existing narrative structure, such as comedy, tragedy, epic, or irony. The reader then comprehends the historian's narrative and grasps its meaning by recognizing it as a story of one type rather than another. Through the shared cultural familiarities between the historian and his or her audience, their joint grasp of the narrative tropes at work, the significance of the story – its moral or, to use White's terminology, its "point" – comes across.<sup>13</sup>

This process has direct ramifications for contemporary life. Narrative structures – certain types of stories – become established and continuously reaffirmed as means of interpreting the world through their continued use. In other words, the more frequently a certain kind of story is told, the more its basic components become a matter of common knowledge.<sup>14</sup> Though White focuses on historical scholarship, his work dovetails nicely with theorist Roland Barthes's arguments about popular culture in *Mythologies* (1957). Focusing more on symbols and language than narrative, Barthes describes a dynamic in which cultural consumers help to create texts and imbue them with symbolic power in the act of absorbing them. Through this collaborative process with cultural producers, certain ideas find their way into myths, symbolic messages whose meaning and truth appear intrinsic and self-evident through their very perpetuation.<sup>15</sup>

Explorations of Leopold and Loeb combined the phenomena that White and Barthes describe. In 1924, the legal proceedings over the case and the pieces by journalists, legal professionals, and behavioral experts in the public sphere sought to explain Leopold and Loeb's crime by situating it within various narrative structures.

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<sup>13</sup> White, "Historical Text as Literary Artifact," 49.

<sup>14</sup> White, "Historical Text as Literary Artifact," 51.

<sup>15</sup> Roland Barthes, *Mythologies*, trans. Annette Lavers (New York: Hill and Wang, 1957, 1972).

They hoped to make the Franks murder comprehensible and explain what kind of crime it was by shaping it into a coherent story, even if they needed to develop a new narrative to do so. Their collective efforts, in collaboration with the public that consumed their work, culturally constructed the Leopold-Loeb case by determining its basic characteristics and the issues to which it related. The precise narratives, and the meaning of those narratives, remained contested, but this process established the terms for the continuing discourse through those narratives, to which representations of the case in later decades adhered. Leopold-Loeb thus became a socially constructed idea affirmed in its basic elements through repetition.

Over the last two decades, especially, historians have begun exploring the social functions and limitations of narrative in greater depth. They approach it in popular as well as scholarly constructions as a means of organizing information, determining (or assigning) the information's meaning, and using it as a component of a comprehensive worldview. Frederick Corney's *Telling October* (2004), for example, analyzes the ways in which culture can serve as a mediating forum for shaping an event's meaning.<sup>16</sup> George Lipsitz's *Time Passages* (1990) shows how contemporary mass culture can create ideas based on the legacy of the past, while at the same time it is in actuality rewriting the past to suit a present-day imperative.<sup>17</sup> And, most directly relevant for this project, Karen Halttunen and Lisa Duggan, in their respective works, show how narratives of criminal and/or sexual transgression

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<sup>16</sup> Frederick Corney, *Telling October: Memory and the Making of the Bolshevik Revolution* (Ithaca: Cornell UP, 2004).

<sup>17</sup> George Lipsitz, *Time Passages: Collective Memory and American Popular Culture* (Minneapolis: U of Minn. P, 1990).

can help to delineate notions of abnormality and dangerous and/or unacceptable behavior, and by correlation notions of normality and acceptable behavior.

In *Murder Most Foul: The Killer and the American Gothic Imagination* (1998), Halttunen argues for the construction of the murderer as a person morally alien to the rest of society in the eighteenth and nineteenth centuries. The Puritan execution sermons that predominated in print discussions of murder throughout the sixteenth and early seventeenth centuries had emphasized the innate depravity of all people, creating a level of identification between the murder and the community at large. Murder was the most grievous sin, but all shared in the murderer's capacity for sin. The audience looked to his or her (usually his) story as a cautionary tale so that they could avoid the moral pitfalls that had befallen the condemned, and hoped that he or she would find salvation and spiritually realign with the community prior to death.<sup>18</sup>

The Enlightenment, which emphasized rationality and the innate goodness of humanity, made murder much harder to explain because it seemed to violate the movement's principles, necessitating a new approach. The result – as secular media, such as journalism, biographies, autobiographies, and court reports began competing with execution sermons to make sense of crime in the second half of the eighteenth century – was the Gothic narrative.<sup>19</sup> Halttunen argues that this narrative fundamentally changed the position of the murderer in American criminal discourse: “The most important cultural work performed by the Gothic narrative of murder was its reconstruction of the criminal transgressor: from common sinner...into moral

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<sup>18</sup> Karen Halttunen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge, Mass.: Harvard UP, 1998), 7-32.

<sup>19</sup> Halttunen, 33-59.

monster from whom readers were instructed to shrink, with a sense of *horror* that confirmed their own ‘normalcy’ in the face of the morally alien” [italics in original]. Gothic narratives focused on the details of murder cases and their perpetrators, the grislier or more shocking the better, to emphasize that the murderer was fundamentally unknowable. Certain details of the murderer’s life or crime could be known, but his thoughts and actions were incomprehensible to a moral and rational person, and he was therefore, in a sense, inhuman.<sup>20</sup>

Halttunen argues that this perception of the criminal as a secular monster shaped modern responses to crime. The Gothic perspective made the criminal into someone who needed to be removed from the society of which he was not really a part – through either execution or isolation in asylums and prisons – in order to protect that society. This philosophy still drives the criminal justice system. Similarly, modern efforts to understand the murderer through true-crime literature reflect the same paradox of investigation and unknowability that defined Gothic narratives. Modern works emphasize the killer’s development through developmental factors such as childhood abuse, “but through their sheer inadequacy, such environmental explanations tend to reinforce the basic assumption that a great moral distance separates normal men and women from monstrous murderers.”<sup>21</sup>

The response to Leopold and Loeb in 1924 exemplified the contradiction of pursuing knowledge of the murderer while keeping him at a remove that made him unknowable. Indeed, the case helped to keep the contradiction vibrant in public explorations of murder as psychiatric and psychological explanations for criminality

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<sup>20</sup> Halttunen, 4-5.

<sup>21</sup> Halttunen, 244.



began to gain influence. A battery of psychiatrists, or “alienists,” for the defense, hoping to make the case for mitigation in Leopold and Loeb’s sentencing, sought to uncover the psychological factors in Leopold and Loeb’s lives that explained why, with nothing material to gain and so much to lose, they chose to murder Robert Franks. The alienists scoured Leopold and Loeb’s lives with painstaking thoroughness. In doing so, they not only brought out and explicated the significance of the most intimate details of the two young men’s lives to offer a scientific, psychoanalytical delineation of their otherness. They also, as historian Paula Fass argues, worked in conjunction with the press to democratize Leopold and Loeb by exposing their humanity and removing some of the mystique from their horrifyingly novel crime.<sup>22</sup> None of it, however, was enough to truly explain Robert Franks’s murder. Outside of the courtroom, scores of experts of varying qualification and journalists sought to supplement or challenge the defense alienists’ work.

Thus began what would become an intergenerational effort to understand the Franks murder as a singularly significant crime, though its perpetrators remained fundamentally different from society in ways that precluded complete understanding. The case’s narrative has been, if not always one of monstrosity, then consistently one of abnormality. Leopold and Loeb therefore remained figures against which people could reaffirm their own normality through their continued but never entirely successful efforts to understand the two killers.

In defining and approaching the case’s narrative, I do not limit myself to sources directly tied to the 1924 murder and sentencing hearing. My approach is similar to Lisa Duggan’s in her study of the 1892 Mitchell-Ward murder case,

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<sup>22</sup> Fass, “Making and Remaking,” 928, 934.

*Sapphic Slashers* (2000).<sup>23</sup> Duggan sees in Mitchell-Ward the formulation and dissemination of a distinct cultural narrative, the lesbian love murder narrative (LLMN). The LLMN drew from preexisting narratives and preconceptions that were present in both nonfictional and fictional media, but synthesized those elements and emerged in its own right from the continuing exchange among medical discourse, journalism, nonfiction crime literature, and fictional works based on the Mitchell-Ward case. These varied means of interpreting and conveying the case, Duggan argues, existed on the same narrative continuum: “The...narrative, chameleonlike, changed its language, forms of address, and generic features as it traveled through these interacting circuits of culture and communication. But it also developed and transported its central elements across multiple cultural locations,” so that each branch of the narrative’s discourse informed and reinforced the narrative as a matter of common cultural knowledge.<sup>24</sup>

Like Duggan, I analyze representations of the same type of crime across different times, genres, and formats, treating fictional and nonfictional media as constitutive elements of the same narrative. Also like Duggan, I view the scientific – by my subject’s time, largely psychological and psychoanalytic – discussions of the case as intertwined with the lay. Leopold-Loeb, however, has had a more explicit resonance in American culture as a historic, precedent-setting event than did Mitchell-Ward. Consequently, Nathan Leopold and Richard Loeb remained infamous names throughout the twentieth century, and the case had a more immediate exchange

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<sup>23</sup> Alice Mitchell, 19, murdered Freda Ward, 17, a love interest who had spurned her. Following an inquisition of lunacy, Mitchell was remanded to an asylum on the basis that her romantic ambitions and the actions she took based on them demonstrated an unsound mind and rendered her unfit for trial.

<sup>24</sup> Duggan, 180-181.

with fictional adaptations. Leopold and Loeb remained explicitly tied to many of the fictional adaptations of their case, while the fictional adaptations were often explicit commentaries on Leopold-Loeb as a historic event.

As my first chapter shows, the case was infused at its inception with explicit relevance as a source text for multiple issues associated with modernity. In the 1920s, approximately forty years of social, political, and economic changes in American life found articulation in a new set of thoughts and practices that constituted a new culture, one more liberal, expressive, and leisure oriented than its predecessor. As the magnitude and the nature of the changes triggered widespread popular anxieties about their possible consequences, people responded to Leopold and Loeb as a way to evaluate certain of these changes' effects.

The issues with which the case became associated, prominent in the 1920s, continued to be important topics throughout the rest of the twentieth century and into the twenty-first, and the Leopold-Loeb narrative continued to be an important part of how people understood and perceived them. The issues' range was wide; a partial list would include childhood, delinquency, intellectualism, parenting, wealth, psychology, and moral versus mechanistic models for understanding behavior. But within the case, over the course of time, these diverse topics were largely subsumed under the rubric of same-sex sexuality. Anti-Semitism, which scholar Paul Franklin argues was a strong undercurrent of the case in 1924, and one closely connected to sexuality, had largely faded from prominence by the 1930s, if not sooner, which helped facilitate the case's development into a parable about psychology, sexuality, and morality, rather than about race. By the 1950s, Leopold-Loeb had become a

cautionary tale about the dangers of male homosexuality, seeming to justify legal and social responses to it as a threat to moral order and public safety, and demonstrating by counterexample what traits “normal” men should or should not exhibit.<sup>25</sup>

Historian Jennifer Terry argues that scientists and physicians, who led the way in shaping public perceptions of homosexuals as a distinct type of person in twentieth century medical discourse, constructed homosexuality as a problem distinctly tied to modernity.<sup>26</sup> Those associations meant that the discourse of homosexuality created a forum for much broader arguments about changes in American life:

Efforts on the part of scientists and physicians to understand homosexuality and to discover its causes have always been linked to larger agendas concerned with what ought to be done not just about homosexuality but about the sexual and social phenomena to which it has been attributed.... Contemplating homosexuality as a particular effect of modernity licensed an array of judgments and a host of penetrating observations and interventions, seemingly circumscribed in their attention to sexual inversion and deviance, but whose reach far exceeded such narrow territory.<sup>27</sup>

Leopold and Loeb facilitated and justified this expanded perception of the significance of homosexuality in two interlocking ways. First, the characterization of

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<sup>25</sup> Paul Franklin, “Jew Boys, Queer Boys: Rhetorics of Antisemitism and Homophobia in the Trial of Nathan ‘Babe’ Leopold Jr. and Richard ‘Dickie’ Loeb,” in *Queer Theory and the Jewish Question*, ed. Daniel Boyarin, Daniel Itzkovitz, and Ann Pellegrini, (New York: Columbia UP, 2003), 121-148. Leopold-Loeb historian Simon Baatz argues that scholars like Franklin overestimate the importance of anti-Semitism in 1924, but in either case Leopold and Loeb’s religion had largely faded from the case’s discourse by the 1930s, when Leopold-Loeb became representative of sexual homicide amidst a moral panic over sexual psychopathy. When Leopold sought parole in the 1950s, he and his supporters worried about an opposition movement arising from Chicago’s Jewish community out of a lingering resentment at the negative publicity the 1924 crime had attracted to it, but no such concerted opposition appears to have arisen, at least publicly. Similarly, Meyer Levin intended for Judaism to be a strong theme in his 1956 novelization of the case, *Compulsion*, but found that few people even noticed it. Levin asserted in another book, *In Search*, that sexuality might have overshadowed race in people’s perceptions of the crime even in 1924. Jordan Foster, “The Science of Murder,” interview with Simon Baatz, *Publisher’s Weekly* 255, no. 23 (9 June 2008). Robert Gault to Nathan Leopold, 8 Jan. 1958, Leopold-Loeb Collection at Northwestern University, box 5, folder 2; Meyer Levin, *The Obsession* (New York: Simon and Schuster, 1973), 104-106; Meyer Levin, *Compulsion* (New York: Simon and Schuster, 1956). Meyer Levin, *In Search: An Autobiography* (New York: Horizon Press, 1950), 27.

<sup>26</sup> Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago: U of Chicago P, 1999), 5.

<sup>27</sup> Terry, 7.

Leopold and/or Loeb as “homosexuals” combined with the imperative to understand what in their personalities made them murderers to make Leopold-Loeb into a prominent case study for determining what traits or behaviors corresponded to male same-sex sexuality. Second – particularly through public sphere discussions that included but were not limited to medical perceptions – the connection of Leopold and Loeb’s sexuality with the apparently motiveless murder they committed allowed commentators to emphasize the importance of marginalizing and/or persecuting homosexuality and its attendant behaviors. Homosexuality, if it was causative for Robert Franks’s murder, presented a mortal threat as well as a moral one.

Dangerous sexuality was formative for the articulation of modern conceptions of normal and abnormal sexualities. Historian Estelle Freedman argues that from the 1930s through the 1950s a distinct criminal type, the male sexual psychopath, emerged jointly from American political, popular, and psychiatric discourses. The sexual psychopath facilitated the redrawing of sexual boundaries to legitimate nonprocreative, nonmarital, heterosexual sexual acts by serving as a foil. He embodied extreme forms of violent male sexualities, against which the new standards of acceptable behavior seemed comparatively harmless. But, as both Freedman and Terry’s work show, the response to the sexual psychopath was not about neutralizing quantifiable predatory threats so much as about delineating and marginalizing a certain type of personality. Laws directed at the sexual psychopath, for example, could apply to men convicted of consensual sodomy as readily those convicted of rape or child molestation. Even people whose transgressions were relatively minor or harmless, the reasoning went, could pose the threat of violence if they fit the

psychopathic personality type. In the new sexual boundaries, then, homosexuality was classified as a dangerous trait.<sup>28</sup>

Scholar David Schmid's work on true-crime narratives illustrates how a similar dynamic continues to be at work in American culture, and continues to negatively effect popular representations of same-sex sexuality. Schmid argues that narratives of serial murder often indicate a relationship between same-sex sexuality and serial murder that an objective reading of the empirical data does not justify. In homicides with clearly heterosexual elements, such as Ted Bundy's murder of multiple young women, true-crime narratives tend to emphasize the murderer's *difference* from men who might seem to share in his sexuality. Bundy, for example, becomes a monster who only appeared to be normal on the surface; he is therefore safely separated from nonviolent heterosexuality. But in serial homicides whose perpetrators exhibit signs of same-sex sexuality, such as Jeffrey Dahmer, narratives of the case tend to *emphasize* the murderer's sexuality, and sometimes the male victim's as well, as a way of further distancing heterosexuality from murder. In either instance, whether true crime narratives alienate the heterosexual killer from his sexuality or connect the same-sex killer to his sexuality, the effect is to create a nonthreatening male heterosexuality that exists in contrast with the inherent dangerousness of male homosexuality; "In other words, true-crime narratives illustrate the supposed lack of

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<sup>28</sup> Estelle B. Freedman, "Uncontrolled Desires: The Response to the Sexual Psychopath, 1920-1960," *Journal of American History* 71, no.1 (June 1987), 83-106. See also: George Chauncey, "The Postwar Sex Crime Panic," *True Stories from the American Past*, ed. William Graebner (New York: McGraw Hill, 1993): 160-178.

connection between heterosexuality and violence by emphasizing just how closely homosexuality and violence are related.”<sup>29</sup>

The supposed connection between homosexuality and violence has wielded considerable power in American sexual political debates, and continues to do so. Narratives of murder with same-sex connotations rely on and reinforce the idea that violence is an essential part of gay culture, not just serial homicide. Those narratives therefore justify the marginalization of same-sex sexuality and the diminution of movements for LGBT equality and tolerance.<sup>30</sup> Leopold and Loeb have performed important functions within this dynamic. Their crime came at an important time in the articulation of new gender norms, and continued to feed into the perceived dangers of same-sex sexuality in men throughout the twentieth century. In the twenties, Victorian-era mores declined and sexuality moved outside of marriage, prompting the articulation of new notions of acceptable sexuality, while at the same time homosexuality took on a new visibility in American public life.<sup>31</sup> Amidst both developments, Leopold and Loeb helped fuel the conception of homosexuality in men as something abnormal and perverse. Their crime became explicitly connected with homosexuality and sexual psychopathy in the 1930s, and kept the connection going long after the 1950s. The Leopold-Loeb narrative provided the perfect anecdotal evidence for treating homosexuality as a personality disorder, or one symptom of a personality disorder, that drove people to kill. Since it was a famous historic event, as compared to a widely espoused psychiatric theory or a political platform, it had a

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<sup>29</sup> David Schmid, *Natural Born Celebrities: Serial Killers in American Culture* (Chicago: Chicago UP, 2005), 209-243; quote is from 209-210.

<sup>30</sup> Duggan, 3; Schmid, 24-25.

<sup>31</sup> John D’Emilio and Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York Harper and Row, 1988), 241; Chauncey, *Gay New York*, passim.

strong but subtle staying power in affecting popular perceptions, and was in some ways harder to contest. Even in the 1980s, when the Leopold-Loeb narrative became enmeshed in movements by playwrights and filmmakers who sought to redefine Leopold and Loeb as figures of gay history, the new adaptations continued the idea that Leopold and Loeb's sexuality was essential to understanding their crime.

Throughout the last eighty-eight years, as people looked to the case for a moral applicable to their own times, Leopold and Loeb remained well-known names, and the exchange between nonfiction and fiction gave heavily subjective, speculative, or wholly fabricated ideas the authority of history in affecting perceptions of contemporary issues. That is why one cannot separate the factual or fictional representations of the case. Moreover, as my work will show, it is impossible to understand the trajectory of the case as a fictional narrative without understanding developments connected to the historic case – especially the actions of Nathan F. Leopold – and vice versa.

The case's discourse was a continuing series of cultural exchanges, and since no contribution existed in isolation from its predecessors, I have decided to approach these exchanges more or less chronologically, over the course of eight chapters in three sections. In the first section, comprised of chapters one and two, I study how some of the key elements that came to define the case first took shape. Chapter one surveys the events of 1924. Robert Franks's murder, Leopold and Loeb's confessions, the prolonged sentencing hearing that followed the two teenagers' guilty pleas, and the press coverage that surrounded all of those events facilitated the social construction of Leopold-Loeb as a precedent-setting event with special significance



for understanding youth, crime, and psychological development. The social construction of 1924 also made same-sex sexuality an important undercurrent in the case, something whose relevance for understanding the murder was elusive but nonetheless very important.

In chapter two, where I study Leopold and Loeb's lives in prison, I explore how those undercurrents became explicit in representations of the case. After Loeb's death at another inmate's hand in 1936, the response in both the legal system and the national press brought the same-sex sexual elements of the case to the forefront, prompted sexualized reevaluations of the Franks homicide, and entwined the case with a moral panic over sexual psychopathy. Leopold and Loeb's sexual relationship has continued to be associated with the murder they committed ever since. Over the course of his time in prison, Leopold pursued such an unparalleled career of accomplishment as an inmate that in 1949 parole became a realistic prospect for him, but he knew that he would still be not be able to convince the parole board or the American public of his rehabilitation unless he diffused the joint public stigma of both the murder and his relationship with Loeb.

The second section of the dissertation, which encompasses chapters three through six, deals with the resurgence of interest in the case in the mid-twentieth century. In the space of approximately a decade, from the late 1940s to the late 1950s, the case's narrative was revised in ways that have continued to the present day. Chapter three analyzes the normality narrative, Leopold's largely self-styled story of rehabilitation in prison. Mobilizing postwar Freudian thought about youth, sexuality, and psychological development, Leopold argued that his relationship with Loeb was

responsible for his, Leopold's, participation in the Franks murder, but that Leopold had progressed beyond that relationship to become a mature heterosexual man. In equating heterosexuality with normality, and normality with rehabilitation, Leopold reinforced midcentury perceptions about the correlation between homosexuality and predatory behavior even as he argued that those prejudices should no longer apply to him.

Chapter four analyzes how Leopold and the normality narrative interacted with the national press, the Illinois parole system, and certain prominent individuals to make Nathan Leopold into a celebrity. Eventually, the narrative's prevalence shaped and mobilized popular perceptions of the case sufficiently to secure Leopold's parole in 1958. In the course of doing so, Leopold-Loeb acquired a new importance as a contemporary event, a source text for understanding mid-century "problems" of juvenile crime, sexual psychopathy, and homosexuality.

Chapter five analyzes the rise of fiction as a means of exploring the case. At the same time that Leopold's parole was bringing the case renewed attention in the national news press, the case inspired a slew of fictional adaptations in novels, plays, and films. The close relation of these fictionalizations to the historical Leopold-Loeb case and the contemporary issue of Leopold's parole gave the fictionalizations a direct relevance for perceptions of the "real events" to which they corresponded, while the narrative flexibility of fiction allowed them to adapt their stories as they saw fit. Like Leopold's normality narrative, the fictionalizations generally reinforced the idea that same-sex sexuality was a causative factor in Robert Franks's murder not because Franks had been the object of sexual lust, but because same-sex sexuality

was indicative of psychological maladjustments that led to antisocial behaviors. The fictionalizations, however, were far more direct about the sexuality of the relationship than Leopold was, and in the ensuing decades fiction continued to perpetuate key elements of the normality narrative long after Leopold's death.

The third and final section of my dissertation deals with the legacy of the Leopold-Loeb case, both for the people associated with it and in American culture. Chapter six studies Nathan Leopold's protracted and ultimately unsuccessful lawsuit over the novel and film *Compulsion* (1956 and 1959, respectively).<sup>32</sup> The suit, which began in earnest soon after Leopold's parole, was Leopold's effort to take control of the narratives of his life. Leopold had hoped that with the twin victories of release from prison and a legal precedent against unauthorized portrayals of his life, he would have the power to reshape his story into a narrative of rehabilitation rather than crime. The lawsuit's eventual failure ensured that he would never be able to effect the wholesale redefinition of his public image that he sought, though he continued to try until his death in 1971. Chapter seven surveys the last years of Leopold's life – as well as his attorney's efforts to shape the legacy of the case thereafter – to study the declining public interest in Leopold-Loeb in the 1960s and 1970s. During that time, Leopold-Loeb completed its transition into a historical event. With the last principal from the case dead, people began to see case as static, a fixed event in 1924 whose meaning was debatable, but whose characteristics were established.

In actuality of course, the case's narrative continued to change. The eighth and final chapter examines how, beginning in the 1980s and continuing through at least the first decade of the twenty-first century, fictionalizations of the events of 1924

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<sup>32</sup> Richard Fleischer, *Compulsion*, 103 minutes (United States: 20<sup>th</sup> Century Fox, 1959), film.

underwent a second renaissance and the case became embroiled in a new generation's sexual politics. Gay rights activists used the case to seek affirming statements about same-sex sexuality, while social and religious conservatives relied on the perception that same-sex relationships in men were inherently dysfunctional and led to antisocial behaviors – a perception the case's narrative had generally reinforced – to argue against granting those relationships legal or social equality. Both sides of the argument adapted their conceptions of the case to suit their own needs, and both sides strongly reflect the narrative of Leopold and Loeb's relationship that emerged in the exchange between nonfiction and nonfiction in the post-World War II era.

The Leopold-Loeb case's narrative had been closely entwined with the social construction of homosexuality in the United States since 1924. Robert Franks's murder had triggered the search for a hidden abnormality in Leopold and Loeb that would explain their otherwise motiveless crime, and as the decades went by, Leopold and Loeb's sexualities increasingly gained emphasis in popular perceptions as the source of that abnormality, particularly for Leopold. By the turn of the twenty-first century, the assumption that the senseless murder of Robert Franks was inherently tied to same-sex sexuality in men had become a largely unquestioned part of the historical "facts" of the case. The assumption became so established that it could endure, and continue to color people's perceptions of sexuality, deviance, and criminality even as the prejudices that had driven the construction of the case's narrative have come under scrutiny.

## CHAPTER ONE

### THE CRIME OF THE CENTURY

“In our opinion the mental condition and conduct of the two defendants, certainly in so far as this crime is concerned, can best be understood when adequate consideration is given to the nature of this relationship between them and the factors which led to its establishment and maintenance.”

– Psychiatric experts for the defense in *The People of the State of Illinois versus Nathan Leopold Jr. and Richard Loeb*<sup>1</sup>

#### INTRODUCTION

The Leopold-Loeb case first took shape between May and September of 1924. The process began during the nine-day manhunt for the perpetrator(s) of the kidnapping and murder of fourteen-year-old Robert Franks, when speculation about the crime helped to shape expectations about who committed it, and vice versa, but it really came into its own after Nathan Leopold and Richard Loeb were arrested for the crime. Neither Leopold and Loeb nor the circumstances of the murder to which they confessed satisfactorily matched the earlier speculation, or any established types. Over the course of the adjudication of their crime, the national media, the public, the criminal justice system, and eventually the psychiatric community all collaborated in forging a new explanatory model from the case. The characteristics they found in Leopold and Loeb were never static or uncontested. There were always multiple perceptions of what the “facts” were, let alone what they meant. But during those four

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<sup>1</sup> William A. White, William Healy, Bernard Glueck and Ralph Hamill, “Joint Medical Report by Drs. White, Healy, Glueck, and Hamill,” in Maureen McKernan, *The Amazing Crime and Trial of Leopold and Loeb*, with an introduction by Clarence Darrow and Walter Bachrach, 1996 reprint (Holmes Beach, Fla.: Gaunt, 1924, 1996), 141-142.

months, the basic constitutive elements of the Leopold-Loeb narrative took form. The notions about the case that people drew from, adapted, or contested emerged, the topics to which the case pertained were established, and the terms for the future debates involving the case were set.

The parameters of the case's discourse in 1924 helped to secure for it a special position throughout life in the twentieth-century United States. During that time, the various participants in founding the case's narrative – especially the news press, the defense, including a team of psychiatric experts, and the public – consciously related it to issues with distinct importance for American modernity. Most strongly, they inscribed the case with significance for understanding modern conceptions of homosexuality, personality development, crime, and the use of psychological approaches to understand relationships among those concepts. And in doing so, they established perhaps the most important element that kept the case's discourse vital: the belief, embraced by later generations, that Leopold and Loeb provided a cautionary tale of some sort. The perception that Leopold and Loeb held the key to understanding a distinct and troubling type of crime and criminal, and that the key related to issues of homosexuality, psychology, and crime or juvenile delinquency, ensured that interest in the case resurged whenever those issues did. In that manner, Leopold-Loeb continued to wield influence long after the events of 1924. But first the case had to become anchored by the basic elements and characteristics that gave later generations the materials on which to build.

## THE MANHUNT

Unlike most crimes, the apprehension of the perpetrators of the kidnapping and murder of Robert “Bobby” Franks deepened rather than resolved the mystery of the case. Franks’s murder had shocked Chicago when it hit the headlines on May 22 that his body had been identified, but it started to become a national sensation after his murderers’ confessions on May 31.

Franks had failed to make it home from school on the twenty-first. That evening, his mother, Flora, received a phone call that he had been kidnapped and the family should await further instructions. The following morning, a special delivery letter demanding 10,000 dollars for the boy’s safe return arrived at the Franks home, and that afternoon Robert’s father, Jacob, received a telephone call providing the first of what would have been several stages of instruction for how to deliver the money. Before Jacob could act on those instructions, however, a Franks family representative identified the body of a young boy found in a secluded park near the Indiana border as Robert’s. The boy had been badly beaten, stripped naked, and his face, stomach, and genitals had been burned with acid. A coroner would determine that Robert had asphyxiated on a rag stuck down his throat, but the exact cause of death was never entirely certain.<sup>2</sup> Whatever it was, Robert was dead before his mother received the initial ransom notice.<sup>3</sup>

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<sup>2</sup> For a discussion of the possible causes and timeframe of Franks’s death, see Hal Higdon *Leopold and Loeb: The Crime of the Century* (Urbana, Ill.: U of Illinois P, 1975, 1999), 104-106.

<sup>3</sup> Several historians and many true-crime authors have covered the basic sequence of events surrounding the murder of Robert Franks and the formal legal proceedings over the crime. Unless otherwise noted, I draw basic information about the case, such as dates, that is not disputed in the documentary record or the historical literature from one or both of the two most detailed discussions of the case: Higdon’s *Crime of the Century* and Simon Baatz’s *For the Thrill of It: Leopold, Loeb, and the Murder That Shocked Chicago*. In any matter where the information involved is obscure or

The crime triggered public outrage and a massive task force to find the person(s) responsible, headed up by Cook County State's Attorney Robert Crowe. But until first Richard Loeb and then Nathan Leopold provided the details of the murder, Franks's murder had seemed compatible with existing criminal types. Robert's abduction and ransom seemed to follow a template established by the kidnapping of four-year-old Charley Ross in Pennsylvania in 1874. Though Charlie's family had not recovered him, his disappearance established a ransom narrative in which child kidnapping was a financial transaction, and which emphasized parental responsibility in securing the return of the child. By 1924, this narrative was secure enough that, though the Franks family was undoubtedly tormented by Robert's disappearance, they could hope for Robert's safe return if they met the kidnappers' demand.<sup>4</sup>

The discovery that Robert was dead put the crime outside of the ransom narrative, but it bolstered perceptions that the Franks kidnapping fit another established type of crime: the sexual murder, committed to satisfy erotic lust. The police publicly stated that there was no physical evidence indicating that Franks had been sexually assaulted and denied that they were treating sex as a motive, but the press nurtured expectations that such evidence would eventually surface.<sup>5</sup> And despite their denials about the murder as a sexual crime, the police began rounding up known and suspected "perverts," including men known for consensual activities with other adult men, not with children. Investigators took in several of Robert Franks's

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contested, I discuss my sources in the text and/or the footnotes. Simon Baatz, *For the Thrill of It: Leopold, Loeb, and Murder that Shocked Chicago* (New York: Harper Collins, 2008).

<sup>4</sup> Paula Fass, *Kidnapped: Child Abduction in America* (New York: Oxford UP, 1997), 21-56.

<sup>5</sup> Potter, 39.



schoolteachers, one of them a suspected homosexual, for questioning. Even though they had alibis for the night for the murder, two were detained for several days and beaten before being released on a judge's order.<sup>6</sup> In another search for an alternative narrative of the crime, the police also rounded up drug addicts all over Chicago on the suspicion that Franks had been the victim of cocaine fiends, and investigated the more specific leads that came in as the public flooded the department and the papers with countless tips and theories about the crime.<sup>7</sup>

The week after Franks's murder secured an enduring place for speculation and public contributions to the resolution of the crime. As the police followed up on many of the specific leads that flooded their offices, the Chicago papers reported on multiple leads in a single edition, acting as though each of them could solve the crime. The *Daily News* put a psychic's vision of three slayers on page one,<sup>8</sup> and at least one newspaper tried to unofficially deputize its readers: the *Herald and Examiner* held a contest with a fifty dollar prize for the armchair sleuth with the best theory of the crime, tantalizing the reader further with the possibility of sharing in the \$10,000 reward for information on the case if his or her theory led to the crime's resolution.<sup>9</sup>

Before the murderers' identity came to light, the Franks case, while horrifying, did not seem new, and therefore did not bring into question any existing perceptions about crime or the society in which it occurred.<sup>10</sup> The most prominent

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<sup>6</sup> Baatz, 16-18.

<sup>7</sup> Higdon, *Crime of the Century*, 64-75.

<sup>8</sup> "Franks' Teachers are Freed on a Writ," *Chicago Daily News*, 29 May 1924.

<sup>9</sup> Higdon, *Crime of the Century*, 68.

<sup>10</sup> Holly Potter, "Leopold and Loeb: Texts and Contexts of an American *Cause Célèbre*" (MA Thesis, McGill University, 1991), 22-23.

investigative avenues continued to presume established criminal types, such as the drug fiend or the sex fiend. That changed early in the morning of Saturday, May 31<sup>st</sup>. The police had brought in Nathan Leopold, a nineteen-year-old law student at the University of Chicago, on May 29. A pair of eyeglasses found near Franks's body matched prescriptions for only Leopold and two other people in the Chicago area, and investigators quickly ruled out the other two as suspects. Leopold was an ornithologist who often went birding in the area where the body was found, so the glasses were not immediately damning. But under questioning, he invoked his friend Richard Loeb as an alibi, claiming they had been together at the time. Loeb, eighteen years old and also a post-graduate student at the University of Chicago, in philosophy, corroborated Leopold's alibi with an extremely similar version of events. As the task force looked into both young men, however, evidence surfaced to belie their story. Confronted with that evidence, Loeb broke around 1:40 a.m. Leopold followed suit soon afterwards.<sup>11</sup>

### THE CRIME

In both contemporary press coverage and subsequent historical studies, the Franks murder case entered a new phase after Leopold and Loeb's confessions.<sup>12</sup> The two youths' admissions were comprehensive, and matched in every detail except that each claimed the other had performed the physical act of the murder. (It remains

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<sup>11</sup> At first, Loeb had claimed not to remember what he had been doing the day of the abduction. Leopold and Loeb had agreed to corroborate one another's stories if either were questioned within a certain period of time, but confusion as to exactly what the timeframe was led Loeb to believe the obligation had expired. When Loeb realized Leopold was using their agreed upon story, he moved to corroborate it. Higdon, *Crime of the Century*, 86-88, 11.

<sup>12</sup> Holly Potter, 42.

unknown who was telling the truth).<sup>13</sup> But the practical details of their crime only prompted further questions, which would echo throughout the twentieth century and propel Leopold and Loeb into lasting infamy.

The two young suspects described an act of horrifying callousness and brutality, committed by suspects who did not match any existing criminal type. Leopold and Loeb had kidnapped and murdered a fourteen-year-old boy to live out a criminal fantasy and prove their intellectual superiority by getting away with the “perfect crime.” The murder itself had, in fact, been incidental to collecting the ransom; the two teenagers did not want to risk leaving a witness. Their victim selection had been similarly cavalier. In an inversion of the usual kidnapping narrative, they had planned their crime meticulously and then picked their victim almost at random.<sup>14</sup> Leopold had suggested abducting a woman they could rape, but they had decided a child would be easier, and they set out on the twenty-first to find a victim of opportunity. Their only criteria were that their target be someone who they could easily subdue and whose family could afford the ransom. They very nearly went after another boy before settling on Franks, whom Loeb knew and had little trouble talking into the car.

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<sup>13</sup> The question of who actually killed Robert Franks remains one of the enduring mysteries of the Leopold-Loeb case. The defense alienists, as well as historians Hal Higdon and Simon Baatz, authors of the two most detailed books on the case, think Richard Loeb killed Franks while Leopold drove the car in which they abducted him. Baatz narrates Loeb as the murderer as a matter of fact, while Higdon states only that Loeb was the more likely perpetrator. The two most direct fictional adaptations of the case, Meyer Levin’s novel *Compulsion* (1956) and Tom Kalin’s film *Swoon* (1992), describe or portray Loeb (or his fictional surrogate) committing the murder, indicating that this version of events has attained some primacy. The evidence, however, is circumstantial and not entirely persuasive. The perception that Loeb performed the physical act of the murder appears to be colored by perceptions of his personality at least as much as the quantifiable evidence available. Baatz, 83; Higdon, *Crime of the Century*, 310, 319; Meyer Levin, *Compulsion* (New York: Simon and Schuster, 1956), 386; Tom Kalin, *Swoon*, 82 minutes (United States: American Playhouse, 1992).

<sup>14</sup> Fass, *Kidnapped*, 57-58.

The randomness of the crime was only one of the elements that contributed to the perception that Franks' murder somehow represented a new type of crime, and therefore needed a new narrative for its interpretation. Another element was Leopold and Loeb's treatment of murder as an elaborate game. Leopold and Loeb had not only created a new association between kidnapping and murder, they had done so with a crime that combined a bizarre combination of cold-blooded efficiency and fantastical elements. They planned the murder for months in advance, trying to think through and neutralize every avenue of detection (apparently their planning did not include precautions against dropping prescription eyeglasses near the body). To throw police off their trail, they constructed a fake identity, and rented the car in which they abducted Franks using that name. Yet, for all the sincerity of their precautions, there was there was something childish about them. In one of the more stark examples of the extent to which they approached murder as a role-playing game, they plagiarized their ransom note from a detective story of the sort Loeb read avidly.

The transition from planning of the murder to executing it does not appear to have troubled them much. They had originally planned to subdue their victim with a blow from a chisel, ether him or her, and, at a secluded spot, strangle their victim together, with each partner holding one end of a length of rope.<sup>15</sup> Hitting Franks with the chisel had, however, only hurt and alarmed the boy, and in the ensuing struggle his assailant, whichever of the two boys it was, stuffed a rag down his throat. Leopold and Loeb then stripped Robert by the side of a secluded road and, with Robert lying in the backseat, stopped for hot dogs in Hammond, Illinois while they waited for

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<sup>15</sup> Leopold and/or Loeb threw the chisel out of their car on the night of the murder. A night watchman found it and turned it in to the authorities. Higdon, *Crime of the Century*, 37.

dark. It is not clear at what point in this process Robert Franks died. Loeb claimed he only saw that Robert had died when the car arrived at the dumpsite, after nightfall. There, he and Leopold finished stripping the body, disfigured it to – unsuccessfully as it turned out – hinder identification (they had burned the genitals because they worried Robert’s circumcision would be a giveaway), and deposited it in the culvert.<sup>16</sup> They then placed the first call to the Franks family from a payphone and, exploiting the expectations about parental responsibility that the Charley Ross kidnapping had established, appealed to Jacob and Flora Franks’s assumption that their son was still alive and their eagerness to secure his release.<sup>17</sup> Neither teenager expressed remorse for his actions.

As disturbing as the crime was, the criminals might have been more so. According to historian Paula Fass, before Leopold and Loeb “most experts had linked juvenile delinquency with deficiencies, deprivations, and neglect in families, education, inheritance, and most recently, in mental endowment.” Schools of thought on delinquency differed in their specifics, but prior to the 1920s, these assumptions dominated thought on the subject and shaped the creation of juvenile court systems at the turn of the century.<sup>18</sup> Much progressive ideology was under assault in the 1920s, but the challenges Leopold and Loeb presented to this particular set of assumptions were stark and very sinister. They came from wealthy and well-respected families (as did their victim, whose advantages had not protected him), had enjoyed indulgences from their parents – perhaps too many – and were intelligent and well educated.

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<sup>16</sup> Higdon, *Crime of the Century*, 104.

<sup>17</sup> Fass, *Kidnapped*, 58. Leopold actually made the phone call; Higdon, *Crime of the Century*, 104.

<sup>18</sup> Fass, *Kidnapped*, 64. For further details on the development of the juvenile court system, see David Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*, rev. ed. (New York: Aldine de Gruyter, 1980, 2002), 205-235.

Generally speaking, they seemed to have had as much opportunity and potential as anyone could hope for. The apparent inexplicability of their crime, combined with its sensational elements, soon to be supplemented by developments stemming from the crime's adjudication, caused Leopold and Loeb to receive far more attention from the press than their victim, in 1924, and ever since.<sup>19</sup>

### THE 1920S AND MODERNITY

The fascination with Leopold and Loeb was borne, in part, of the fear that they might represent a terrifyingly modern phenomenon, the grisly products of a dramatic shift in American values and culture towards the loose collection of thoughts and practices that constituted modernity. Many historians agree that in the decade or so after World War I, the economic, social, and cultural trends of the preceding four decades finally coalesced in a new worldview, with the institutions to accompany it.<sup>20</sup> In *The Damned and the Beautiful: American Youth in the Twenties* (1977) historian Paula Fass argues that during the 1920s “that longstanding ambivalence, the tension between modern and traditional modes of thought and behavior, was finally played out, and the social changes that had been remaking America for decades finally congealed into a pattern which would shape life in the twentieth century.” That coalescence came about through a period of drastic cultural adaptation which, while remarkably swift and effective, created a great deal of anxiety and conflict about the

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<sup>19</sup> Fass, *Kidnapped*, 61.

<sup>20</sup> See: Robert Wiebe, *The Search for Order, 1877-1920*, American Century Series edition (New York: Hill and Wang, 1968), 286-302; Lynn Dumenil, *The Modern Temper: American Culture and Society in the 1920s* (New York: Hill and Wang, 1995). Warren Susman, “Culture and Civilization: the Nineteen-Twenties,” in *Culture as History: The Transformation of American Culture in the Twentieth Century* (New York: Pantheon, 1984), 105-121.

moral and social direction of the country.<sup>21</sup> Leopold and Loeb intensified those anxieties by raising the possibility that perhaps modernity itself was inherently corruptive. Many people worried that the Franks murder, a new type of crime, was a result of the new way of living.<sup>22</sup>

The 1920s had at its base a combination of cultural liberalism and political conservatism. Following a recession for a few years after World War I, the twenties saw a period of prolonged economic growth. Not everyone enjoyed the wave of prosperity, and it was not distributed equally across racial, class or occupational lines. But enough people thrived economically to give the general impression of prosperity. Businessmen and corporations eagerly took credit for the boom, allowing both to take on a somewhat idealized position in the twenties.<sup>23</sup> At the same time, the national experience in World War I, the tumultuous events of 1919, and general discomfort with increased centralization, bureaucracy, and power of the federal government left much of the public disillusioned with the ideals and optimism that had characterized the Progressive movement of the early twentieth century. The disillusionment was particularly pronounced among the native-born white middle class that had been the Progressive movement's backbone. Twenties culture thus formed in an environment in which faith in government was low, traditions had come into question, and prosperity through corporate capitalism appeared to be the order of the day.<sup>24</sup>

Those forces combined to create a value system more heavily rooted in

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<sup>21</sup> Paula Fass, *The Damned and the Beautiful: American Youth in the 1920s* (New York: Oxford UP, 1977), 5.

<sup>22</sup> Paula Fass, "Making and Remaking an Event: the Leopold and Loeb Case in American Culture," *Journal of American History* 80, no. 3 (Dec. 1993): 924.

<sup>23</sup> Eric Foner, *Give Me Liberty! An American History*, Seagull ed., vol. 2 (New York: WW Norton, 2006), 663, 665-667.

<sup>24</sup> Dumenil, 15-55.

consumerism, leisure, and secularism than its predecessor. Many people offset their fears that modern life was depriving them of their senses of fulfillment and identity by approaching consumerism and leisure as statements of individuality. Like most trends in the twenties, that one was not new to the decade, but its scale and manner were. A host of new or newly affordable products, increased spending power, and a revolution in advertising combined to make consumer spending an appealing substitute for the faith in prewar institutions that many people had lost. 1920s advertising men, building upon their experiences in selling the American way of life during World War I, began marketing products by connecting them to certain lifestyles, offering them as the keys to self actualization, self expression, social success, happy family lives, and assuagement of the anxieties attendant with modernity. Similarly, leisure activities that emerged or found wider social acceptance in the 1920s took on an importance that exceeded their recreational appeal. All of these developments helped to make the material world seem an avenue towards nonmaterial ends.<sup>25</sup>

None of the cultural developments of the twenties was unequivocal or uncontested. The Leopold-Loeb case unfolded – and became a cultural battleground – amid intense social anxiety and conscious efforts to control national values. Throughout the decade, various figures, organizations, and movements emerged to combat the new orientation of the times by either protecting or restoring the dominance of older values.<sup>26</sup> Most of the anxieties about the times were subtler,

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<sup>25</sup> Dumenil, 41, 56-97; Roland Marchand, *Advertising the American Dream: Making Way for Modernity, 1920-1940* (Berkeley: U of Cal. Press, 1985).

<sup>26</sup> Among other examples: the Ku Klux Klan tried to defend a white protestant patriarchal vision of America from increasing racial and ethnic pluralism and increased autonomy for women; religious



however, and held by a population that, as a whole, had neither fully embraced nor fully rejected the “modern temper,” and was extremely concerned with understanding its implications. 1920s society was extremely self-conscious and analytical, to the point that throughout the decade “experts” of various stripes sought to make their livings by explicating the new era. Even the people who embraced the new consumerism lived in a state of constant concern about the world and their place in it.<sup>27</sup>

Concern about the changing behavior patterns of the twenties focused, as such concerns often did, on the young, who were at the vanguard of the new cultural liberalism.<sup>28</sup> Leopold and Loeb struck right to the heart of the ambivalence towards change. The two teenagers epitomized the fashionable hedonism of the time period. They smoked cigarettes, drank in spite of prohibition, frequented speakeasies and dance halls, dated, engaged in premarital sex, had access to cars, and enjoyed virtually limitless financial indulgences from their parents. Perhaps their crime, then, a kidnapping and murder for the sheer thrill of it, was the ultimate consequence of the decade’s pleasure-seeking zeitgeist. If so, the behavioral laxity of the decade was deeper and more sinister than even the harshest moralizers had previously feared, and an epidemic of random and motiveless murders among the young could prove the result. Class undoubtedly fuelled much of the animosity toward Leopold and Loeb as well. They had the opportunities and the luxuries that popular culture idealized but few people really attained. People, consciously or unconsciously, could find a

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fundamentalists hoped to see faith win out against secularism in the Scopes “Monkey Trial” over the teaching of evolution in Tennessee in 1925; Congress severely limited immigration; and “Drys” tried to protect their vision of a sober Protestant republic.

<sup>27</sup> Susman, “Culture and Civilization: the Nineteen-Twenties,” *Culture as History*, 105-121.

<sup>28</sup> Fass, *Damned and the Beautiful*, 5-6.

righteous expression for their resentment by connecting Leopold and Loeb's lifestyles to their criminality. Those connections, however, still heightened anxieties about the possible consequences of 1920s cultural trends.

The imperative in murder narratives to isolate the murderer from the rest of society as a way of reaffirming that society's morality, which Karen Halttunen traces back to the late eighteenth and nineteenth centuries, was thus intensified in the case because the murderers seemed to represent a particular threat to modern culture.<sup>29</sup> Moreover, since, as Paula Fass argues in her study of the twenties, "robust with business styles, technologies, educational policies, manners, and leisure habits which are identifiably our own, the decade sits solidly at the base of our [American] culture," the case retained this significance throughout the twentieth century.<sup>30</sup> Present when modern culture was first articulated, Leopold-Loeb reemerged whenever anxieties attendant with that culture flared.

### CRIME REPORTING IN THE 1920S

The adjudication of Leopold and Loeb's case was inextricably intertwined with the press's coverage of it. The papers did not wholly create the fascination with the two young murderers, but they did help to frame and feed it. After Leopold and Loeb's confessions, reporters were no longer able to explain the crime by offering up theories about what established type of crime the Franks case was, but they quickly found a fresh angle in trying to create new explanatory narratives of the case. In doing so, and in hyping perceptions of the case as important for understanding modern

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<sup>29</sup> Karen Halttunen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge, Mass.: Harvard UP, 1998), 4-5.

<sup>30</sup> Fass, *Damned and the Beautiful*, 3.

times, the papers helped to establish Leopold-Loeb as a precedent-setting event, something that was not just noteworthy, but historical.

Leopold and Loeb were well suited to the 1920s press. News stories about crime and criminals had long provided a vital forum in which to articulate standards of acceptable and unacceptable behavior, but in the 1920s such stories took on a new importance.<sup>31</sup> While cultural liberalism was raising questions about moral and social standards, prohibition brought the integrity of the law and the citizenry into question. The Volstead Act's opponents complained that the federal government had reduced its moral authority by weakening the boundary between normal, moral people who liked to drink and antisocial, habitual felons. People also worried that the frequency and cavaliness with which citizens violated the law indicated a civic breakdown.<sup>32</sup>

Conceptualizing and responding to extraordinary criminal acts in the public sphere, primarily through newspaper accounts, were important means of dissipating some of the attendant anxieties of modern American culture. In reading about and condemning particularly egregious crimes like the Franks murder, people could use their sense of revulsion to affirm that public morals were still strong enough to be offended by extreme acts. In following news stories in which the perpetrators of such acts were brought to justice, people could affirm that law and social order would triumph, a dynamic that ensured a heavy press presence as Leopold and Loeb's case went through the criminal justice system.<sup>33</sup>

Crime stories also became more sensational and more national. Long before

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<sup>31</sup> Holly Potter, 27.

<sup>32</sup> Claire Bond Potter, *War on Crime: Bandits, G-Men, and the Politics of Mass Culture* (New Brunswick, NJ: Rutgers UP, 1998), 23-25. Anti-prohibitionists also drew upon white fears of racial decline, implying that the weakening of moral and legal boundaries threatened white dominance.

<sup>33</sup> Holly Potter, 52-53.

the twenties, papers reserved their most detailed crime coverage for exceptional cases. Murderers or high-end larcenists piqued readers' interest more than petty thieves and street criminals, and provided a more effective means of exploring what kinds of behavior were unacceptable amidst rapidly changing standards.<sup>34</sup> In the twenties, however, news syndicates, wire services and concentration of newspaper ownership all meant that much of the news was coming from fewer and fewer sources even as circulation climbed to the point that there was one copy of a daily newspaper for every three people in the United States.<sup>35</sup> Large readerships consuming increasingly standardized stories made it much more likely a local event would receive national attention.<sup>36</sup> The content of the papers, meanwhile, turned increasingly towards crime coverage to provide the kind of graphic material that had attracted readers during World War I.<sup>37</sup>

Because of these trends in public representations of and interest in crime, coupled with an increased focus on criminal proceedings as spectacles, the twenties saw a slew of high-profile criminal cases and trials in which the press played a crucial role in conceptualizing events for public consumption.<sup>38</sup> None, however, achieved the same level of prominence as Leopold-Loeb. At a time when crime bore connections to modernity that seemed ominous to people in the twenties, the press and the public approached Leopold and Loeb's crime as though it had a singular relevance to modernity, and scrambled to learn as much about the crime and its perpetrators as they could.

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<sup>34</sup> Holly Potter, 26-27.

<sup>35</sup> Daniel Kyvig, *Daily Life in the United States, 1920-1940* (Chicago: Ivan R. Dee, 2002, 2004), 190.

<sup>36</sup> Kyvig, 190; Holly Potter 29-30.

<sup>37</sup> Holly Potter, 52-53.

<sup>38</sup> Holly Potter, 50-60.

## THE PRESS AND THE DEFENSE

At first, reporters uncovered whatever material they could get about the crime and its perpetrators, from background on Leopold and Loeb's families to information about sixteenth century authors Leopold read.<sup>39</sup> But, as Paula Fass argues, "coverage was only part of the press's job. Maintaining an almost constant presence on the front page, discussions of the crime and the case were mounted in a frenzy of competitive sensationalism."<sup>40</sup> Maintaining that frenzy proved difficult after District Attorney Crowe made first Leopold and then Loeb's confessions public the week after they made them, during the grand jury proceedings.<sup>41</sup> The case began to lose some of its prominence as the 1924 Republican national convention replaced it as the biggest story going, even for the Chicago papers.<sup>42</sup> At first, even the introduction of psychiatry into Leopold and Loeb's defense did not bolster the case's prominence, because reporters assumed that the doctors who were examining Leopold and Loeb and were doing so in anticipation of a conventional insanity defense.<sup>43</sup>

The case resurged on the front pages, and took on the kind of prominence that would make it recognizable throughout the remainder of the twentieth century,

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<sup>39</sup> "An Unprecedented Crime," *Chicago Daily Tribune*, 1 June 1924.

<sup>40</sup> Fass, "Making," 923.

<sup>41</sup> "Leopold had Booking to Sail Wednesday," *Chicago Daily News*, 6 June 1924; "Loeb's Confession Accuses Leopold; Typewriter Found," *Chicago Daily News*, 7 June 1924.

<sup>42</sup> By June 11<sup>th</sup>, the day of Leopold and Loeb's arraignment and 5 days after the first papers ran Leopold's confession, the two young defendants were completely off the front page of the *Tribune*. The *Daily News* – which had broken key elements of the story, so much so that two of its reporters eventually won a Pulitzer and split a portion of the reward money Jacob Franks and the Chicago Police department offered for information leading to the case's resolution – kept the story more prominent than the *Tribune*, but there too Leopold and Loeb were off the front page by the fourteenth. "Arraign Franks Slayers Today on Dual Charges," *Chicago Daily Tribune*, 11 June 1924; "More Doctors Test Leopold and Loeb," *Chicago Daily News*, 14 June 1924; Higdon, *Crime of the Century*, 44-46, 89-90, 276.

<sup>43</sup> "Gland Expert Called to help Franks Slayers," *Chicago Daily Tribune*, 13 Jan. 1924; "Two Specialists in Psychiatry Test 2 Slayers," *Chicago Daily Tribune*, 14 Jan. 1924.

because of Clarence Darrow, the head of Leopold and Loeb's defense team. Darrow, sixty-seven when he took the case and the most famous defense attorney in the country, understood that his clients could literally live or die on the basis of public perception. Accordingly, he made his clients very available to the press. During their sentencing hearing, Leopold and Loeb virtually held daily press conferences, meeting with as many as six reporters at once, sometimes twice a day. Darrow's liberality with public relations kept the press constantly printing copy coming from his side, and encouraged reporters to write about Leopold and Loeb as people, albeit generally despicable ones, instead of specimens. Leopold and Loeb, for their part, quickly learned to manipulate the press, excluding reporters whose coverage they disliked and quickly boycotting out-of-state reporters whose stories they could not monitor.<sup>44</sup> Leopold was learning lessons about media relations that he refined and deployed thirty years later, when he launched a concerted public relations campaign to secure his parole.

More importantly, however, Darrow developed a legal position that brought the widespread efforts to explain the crime into the judicial proceedings and ensured that the press would have all that it needed to continuously hype the case with fresh material. At what would have been the first day of Leopold and Loeb's trial, Darrow announced an unprecedented legal maneuver: both defendants were withdrawing their initial pleas of guilty, and would be introducing psychiatric testimony *in mitigation of their sentencing* in the hopes that they would receive prison sentences in lieu of the death penalty. The press had not been permitted to know what the psychiatrists who visited Leopold and Loeb were doing because Darrow wanted his move to be a

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<sup>44</sup> Higdon, *Crime of the Century*, 226.

surprise, hence the widespread assumption that the doctors were preparing for a not-guilty-by-reason-of-insanity defense.<sup>45</sup> But once Darrow announced his move, he made sure the work of his experts, or alienists, was readily available for the press to cover, turning the sentencing hearing into the subject of a national discussion about the role of psychiatry and psychology in understanding and responding to crime.

Darrow's innovative legal strategy was borne of necessity. Leopold and Loeb's confessions and the insurmountable corroborative evidence Crowe subsequently accumulated made a straight not guilty verdict virtually impossible, and it would have been extremely difficult for Darrow to find twelve citizens willing to acquit Leopold and Loeb on a mental incompetency defense. The defendants had shown too much rationality in their planning, Crowe had brought in his own alienists to document their soundness of mind, and public opinion ran strongly against the possibility that Leopold and Loeb might serve only brief sentences in an asylum.<sup>46</sup> But if Darrow's argument for mitigation were successful, Leopold and Loeb would not be set free or remanded to an insane asylum; they would go to prison for life. And, since their legal guilt was not in question, there would be no jury. One man, Cook County judge John Caverly, would bear sole responsibility for deciding the defendants' fates, and would have to live with the knowledge that Leopold and Loeb's lives were spared or taken in accordance with his decision.

This defense had the appeal of offering a fuller explanation for the crime than could the prosecution, or had the press thus far. The state's alienists represented an

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<sup>45</sup> "Gland Expert Called to Help Franks Slayers," *Chicago Daily Tribune*, 13 June 1924.

<sup>46</sup> Like most states, Illinois followed the M'Naughton rule for insanity, which held that an individual could be deemed insane only if he did not understand his actions or did not know they were wrong. Leopold and Loeb had committed their crime precisely because they knew the action was wrong and hoped to avoid detection for it. Higdon, *Crime of the Century*, 128; Baatz, 154.

older school of thought, believing that mental disease was a product of physical problems in the brain and went hand-in-hand with intellectual impairment.<sup>47</sup>

Accordingly, they argued that Leopold and Loeb should be held fully accountable for their crime because the two murders showed no signs of impaired cognitive function and a clear awareness of what they were doing when they murdered Franks. But to argue that Leopold and Loeb were responsible for their crime was not the same as to explain why Leopold and Loeb had committed it, and the state's experts received far less press fanfare than the defense alienists.

The defense alienists used newer approaches, united by an adherence to psychoanalysis, to argue that although Leopold and Loeb had each made the rational choice to commit murder, subconscious factors rooted deep in their personalities had colored their decisions in such a way that it was impossible to assign them complete free will. Therefore, it was unfair to give to them the ultimate punishment for their actions.

The introduction of psychoanalysis into the adjudication of the case formalized efforts to determine the case's lessons for understanding modernity and added a clinical dimension to them. Journalists, religious leaders, and social commentators used the case to warn people about modernity and the particular perils that modern culture posed for youth. The Reverend Billy Sunday, for example, called the case a result of the "moral miasma which contaminates some of our 'young intellectuals.'" It is now considered fashionable for higher education to scoff at God.<sup>48</sup> Pseudo-scientific behavioral experts claimed to have the key to

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<sup>47</sup> Baatz, 264-265, 341-347.

<sup>48</sup> *Chicago Daily Tribune*, 5 June 1924, qtd. in Higdon, *Crime of the Century*, 134-135.



understanding Leopold and Loeb as individuals. Their efforts included a series of articles analyzing Leopold and Loeb's facial features, a phrenological breakdown, and at least one assessment by a "scientific astrologist" who used the zodiac to examine the two young men's psyches.<sup>49</sup> In a bid to combine sensationalism, celebrity, and scientific credibility, both William Randolph Hearst and the editors at Chicago Daily Tribune separately tried to retain Sigmund Freud to come to America and analyze the two youths as best he could from observation and documentary evidence. Freud declined both offers, citing in part his discomfort with analyzing subjects with whom he could not speak.<sup>50</sup>

The defense alienists had extensive access to Leopold and Loeb. As such, they could provided a level of comprehensiveness in their studies of their subjects, and a level of depth in their dissections of those subjects' personalities, that no one could rival. Darrow's introduction of psychoanalysis into the sentencing hearing thus channeled a psychological interest in the case that had been flourishing in the public sphere into the formal proceedings. The press was happy to follow it there. Throughout the legal proceedings, the papers either reported on and/or reprinted the alienists' findings with an almost fanatical devotion, while at the same time offering up supplementary or contradictory materials to help democratize that information and facilitate wider speculation about the sources of Leopold and Loeb's criminality.

Darrow's tactic at the sentencing hearing ensured that, whether people approved or not, or whether people agreed with the alienists or not, Leopold-Loeb would thereafter be inextricably tied to psychological explanations of human

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<sup>49</sup> Higdon, *Crime of the Century*, 140.

<sup>50</sup> Higdon, *Crime of the Century*, 139-140.

behavior. The alienists procured much of the raw information that was adopted or adapted in later interpretations of the case, and their analytical arguments about Leopold and Loeb echoed throughout the decades that followed their work. Thus were key parameters of the case's future discourse set. But at the same time, analyses of Leopold-Loeb as a case, and Leopold and Loeb as individuals, allowed much room for speculation and conjecture.

### PSYCHIATRY, PSYCHOLOGY, AND PSYCHOANALYSIS

Darrow's defense strategy had the conceptual advantage of mobilizing a modern discipline towards understanding a modern crime. Alienism, the study of mental illness, was an established field by the 1920s, but psychoanalysis was a relatively new method for that study. A particularly American branch of psychoanalytic psychiatry developed throughout the first three decades of the twentieth century. The discipline defies ready generalization; Sigmund Freud's influence loomed heavily over it, but from its earliest days the American discipline developed down myriad paths and through myriad schools of thought, many of them independent from Freud and of which Freud himself did not approve. The defense alienists, for example, derived their approaches from Adler and Jung as well as Freud, along with ideas they developed independently.<sup>51</sup>

What united the new wave of American psychoanalysis was a common eschewal of the belief that a person's decisions were the exclusive products of conscious and unfettered will, beliefs which drove Victorian-era concepts of moral choice and character as well as the American criminal justice system. Instead,

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<sup>51</sup> Baatz, 265.

American psychoanalysts sought to uncover the sources of the traits and drives that made up an individual's personality, believing that a person's emotions, thoughts, and behaviors were products of the various influences that operated upon him or her. Few concerned themselves solely with the mind in seeking out those influences. American psychoanalysts in the 1920s – certainly the ones who examined Leopold and Loeb – also put a great deal of stock in the importance of physiological influences, especially glands, and saw the physical and the mental as connected.<sup>52</sup>

The psychoanalytic approach offered a useful vehicle to psychiatrists who wanted to move their purview beyond asylums for the clinically insane and into mainstream American society. As late nineteenth-century mores declined, psychoanalysts offered a new model for interpreting human behavior, one that was secular, mechanistic, and, in America, closely connected to psychiatry and physiology, and therefore to the authority of medical science. In this model, Victorian thought, which placed people within binary moral categories of good and evil, or binary psychological categories of sane and insane, was overly simplistic. As historian Nathan Hale argues, "Proposing to identify defect where others saw soundness, difference where ideologues saw sameness, [psychoanalytical] psychiatrists staked their claim to the uncharted territory that they argued lay between frank manifestations of disease on the one hand and indisputable normality on the other."<sup>53</sup> By placing behaviors and personalities on a spectrum between two poles, normal and abnormal, psychoanalytic psychiatrists did not have to restrict themselves

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<sup>52</sup> Harold Hulbert, a defense alienist and endocrinologist, provided the most detailed analysis of the connections between Leopold and Loeb's physical and psychological characteristics. Baatz, 247-251, 327-334.

<sup>53</sup> Nathan Hale, *The Rise and Crisis of Psychoanalysis in the United States, Freud and the Americans, 1917-1985*, Freud in America, vol. 2 (New York: Oxford UP, 1995), 8, 62.

only to people who showed mental problems that impeded their ability to function in society to the point that they required residential care. Instead, psychiatrists could effectively take over the positions of the moralists whose authority they challenged.<sup>54</sup>

Psychoanalytic psychiatrists therefore waged a twofold campaign: to shift the debate from one of morality to normality, and to position themselves as arbiters and explicators of the latter concept in order to exercise authority over the whole of society. Normality, in the professional sense, was not a relative or a subjective concept, but rather a psycho-medical diagnosis that evaluated a person's health by his or her ability to behave in a way that doctors considered appropriate.<sup>55</sup>

The Leopold-Loeb case gave the defense alienists a high profile venue in which to bolster their authority by explaining a crime that otherwise seemed to defy explanation, but which the public wanted to understand. By the 1920s, psychoanalysis was beginning a period of ascendant authority that continued for forty years, but it was very much in tension with both lay and professional thought that still understood behavior as a matter of moral choice.<sup>56</sup> Unsurprisingly then, given the showcase that the hearing could provide the discipline – and the financial resources at Leopold and Loeb's disposal – Clarence Darrow was able to secure an impressive assemblage of leaders in the field.<sup>57</sup> Among them were the President of the American Psychiatric

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<sup>54</sup> Elizabeth Lunbeck, *The Psychiatric Persuasion: Knowledge, Gender, and Power in Modern America* (Princeton, Princeton UP, 1994), 3, 20-24, 46-77.

<sup>55</sup> Lunbeck, 76-77.

<sup>56</sup> Hale, 74.

<sup>57</sup> Both the State and Defense alienists who testified received 250 dollars a day, not including expenses, for their testimony. Historian Simon Baatz asserts that some defense alienists made as much as 1,000 dollars per day. Baatz, 268.

Association, the head of the psychiatric clinic at Sing Sing prison in New York, and one of the foremost experts on juvenile delinquency in the country.<sup>58</sup>

With Leopold and Loeb's sentencing hearing, the defense alienists hoped to expand their field's authority by challenging the philosophical foundations of the criminal justice system. One alienist, William White, said in his testimony that "responsibility...is a legal fiction which is pinned on the defendant for the purpose of justifying a verdict either of guilty or not guilty as the case may be."<sup>59</sup> Had the defense secured a legal ruling or a verdict of popular opinion agreeing with that statement, it would have been a profound and high profile victory for the psychoanalytical field, a step towards fundamentally altering perceptions of human behavior in one of the most prominent forums that dealt with it. Darrow, eager to capitalize on the buzz surrounding his argument, even proposed that the defense and prosecution alienists perform their assessment jointly in the pursuit of a disinterested, clinical understanding unencumbered by the adversarial nature of a conventional criminal proceeding. State's Attorney Crowe, unsurprisingly, declined.

Crowe tried to diffuse the defense's strategy by treating the hearing as much like a standard criminal trial as possible. Though Leopold and Loeb's guilt was not in question, Crowe argued the exact circumstances of the murder constituted aggravating circumstances to be taken into account in sentencing. He called 83 witnesses, essentially trying the case without a trial. He also attributed the murder to conventional motives, insinuating that Leopold and Loeb had pursued the ransom

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<sup>58</sup> Those three men were William White, Bernard Glueck, and William Healy, respectively.

<sup>59</sup> William White, testimony, *People of the State of Illinois versus Nathan Leopold Jr. and Richard Loeb*, Sentencing Hearing Transcript, 23 July-10 September 1924, vol. 3, 1375. A nearly complete stenographic transcript of the sentencing hearing, hereafter cited as Sentencing Hearing Transcript, is available through the World Trials Library, accessible via Heinonline.

scheme in order to pay off their gambling debts, and/or that Franks had been the victim of a sexual assault.<sup>60</sup>

None of Crowe's assertions, however, was enough to convince people to disregard the crime as an act of thrill seeking, particularly once the defense alienists began releasing corroborative and supplementary material for Leopold and Loeb's versions of events. The defense was clearly able to establish that Leopold and Loeb had ample access to their fathers' financial indulgences. And, although the tinge of a sexual crime underlay many perceptions of the Franks murder, and Crowe's insinuations did further those perceptions, the sexual motives he hinted at did not account for the other dimensions of the murder. Crowe's allegations of a sexual motive might have existed alongside the emerging narrative of a murder for its own sake, but they did not supplant it. The defense alienists, in contrast, explained the crime as Leopold and Loeb had described it, by attributing it to factors not evident in the crime itself. They dissected the whole of their subjects' pasts, physiologies, and personalities to explain how Leopold and Loeb's respective personality developments led them, in a manner of which the two killers were not even aware, to commit the murder.

#### THE HULBERT-BOWMAN REPORT

Many doctors worked for the defense in some capacity or another – Leopold recalled the total as fourteen – but the five doctors who formally submitted evidence related to Leopold and Loeb's psychological states were the most important.<sup>61</sup> Their work came primarily in two phases. First came the construction of a preliminary

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<sup>60</sup> Robert Crowe, Sentencing Hearing Transcript, vol. 1, p. 21; vol. 7, 4184-85, 4201-4202.

<sup>61</sup> Nathan Leopold, *Life Plus 99 Years* (New York: Doubleday, 1958), 63.

report by Karl Bowman and Harold Hulbert, for use by the doctors who would analyze the defendants in court. Next came the testimony itself, from Hulbert and three other doctors: William White, William Healy, and Bernard Glueck. Those three doctors, along with a fourth, Ralph Hamill, also worked on a joint medical report summarizing their analyses, which was not admitted into evidence but was made available in a primary source reader on the case in 1924.)<sup>62</sup>

Hulbert and Bowman began the psychological deconstruction of Leopold and Loeb and set many of the terms on which it would proceed. The Hulbert-Bowman report was so exhaustingly detailed that, according to Leopold-Loeb historian Hal Higdon, it constituted “probably the most comprehensive study ever made of two defendants in a murder case.”<sup>63</sup> The final report ran to approximately 50,000 words and occupied 300 pages in the official transcript of the sentencing hearing. The doctors examined Leopold and Loeb on thirteen separate occasions, and interviewed the two subjects’ families and governesses for additional information. For their physical examination, Hulbert and Bowman took x-rays, endocrine studies, blood work and urinalyses, family histories, and documented matters as seemingly minor as how often Leopold and Loeb shaved, when their pubic hair first came in, and whether either still had any baby teeth. As a psychological study, the two doctors documented Leopold and Loeb’s family genealogies, personal experiences, sexual histories and intimate fantasies. Hulbert and Bowman went into such depth in chronicling their subjects that the report included detailed descriptions of Leopold’s doodles in a notebook and a sample of one of his school papers. The doctors also – though the full

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<sup>62</sup> White, et. al., “Joint Medical Report,” 141-163.

<sup>63</sup> Higdon, *Crime of the Century*, 147.

analyses were supposed to wait for court – provided brief summaries and conclusions about their subjects’ personalities.<sup>64</sup>

As with almost everything else about Leopold-Loeb, the press mediated the alienists’ work. Hulbert and Bowman began a collaboration between the psychiatrists and the popular press in understanding Leopold and Loeb that continued throughout 1924 and has had ramifications ever since. The report was meant to save time for the expert witnesses who would interpret the subjects on the stand, but a populace that wanted to know more about the most infamous criminals in the country could not have asked for a better resource. Darrow was undoubtedly aware of how appealing the document would be to reporters, and might have exploited that appeal to bolster his defense. The “confidential” document leaked, perhaps intentionally, such that it ran on the day that the first expert witness, William White, was supposed to testify. That day was a Monday, so papers that had no other news of the case over the weekend were certain to publicize the report to its greatest effect.<sup>65</sup> The Chicago papers reprinted extensive – but redacted – excerpts from the report, while major out-of-town papers summarized its findings.<sup>66</sup>

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<sup>64</sup> *Nathan Leopold: Preliminary Neuro-Psychiatric Examination by Karl Bowman and H.S. Hulbert*, Northwestern University Archives, [http://www.library.northwestern.edu/sites/www.library.northwestern.edu/files/pdfs/leopold\\_psych\\_statement.pdf](http://www.library.northwestern.edu/sites/www.library.northwestern.edu/files/pdfs/leopold_psych_statement.pdf). *Richard Loeb: Report of Preliminary Neuro-Psychiatric Examination by Karl Bowman and H.S. Hulbert*, Northwestern University Archives. [http://files.library.northwestern.edu/archives/loeb\\_psych\\_statement.pdf](http://files.library.northwestern.edu/archives/loeb_psych_statement.pdf). Extensive reprints of the Hulbert and Bowman’s findings on Loeb and Leopold can also be found in McKernan, on pages 83-108 and 108-140, respectively. Technically, Hulbert and Bowman conducted two reports, one on Nathan Leopold and one on Richard Loeb, as some sources reflect. This project, however, follows the many others that use the singular tense to reflect that the reports were leaked and often discussed jointly.

<sup>65</sup> As it happened, Crowe filed an objection to White’s testimony, which precluded White from taking the stand that day. After four days of argument, Judge Caverly overruled Crowe’s objection and White began his testimony on Friday, August 1. Higdon, *Crime of the Century*, 188-189, 205.

<sup>66</sup> Higdon, *Crime of the Century*, 189; “Loeb Master Mind, Leopold his Slave, Alienists Declare,” *Washington Post*, 28 July 1924; “Loeb ‘Master Mind’ of Franks Slaying, Alienists Report,” *New York*



The exposure was a peculiar variation on the celebrity journalism of the time. Historian Charles Ponce de Leon argues that, as people were becoming aware that a person's public persona did not necessarily match his private life, celebrity journalism relied on a journalists' ability to convince the audience that the reporter was getting past the persona to find the celebrity's true self (a true self that in actuality was often carefully constructed for public consumption). Such features, Ponce de Leon argues, "far more than conventional news stories, offered journalists unique opportunities to moralize and promote values" because they could demonstrate the roads to happiness or unhappiness through their coverage of their subject's life.<sup>67</sup> The Hulbert-Bowman Report, and the testimony soon to follow, adhered to the same pattern, but in a very different way. The report was a clinical study that extracted far more detail about its subjects than a celebrity journalism piece would have. And it offset fears about image management by virtue of the circumstances under which the information was extracted and the embarrassing nature of its content. The page-one headline to the *Daily News's* description of one alienist's testimony, for example, practically gloated "Leopold Loses Dignity."<sup>68</sup> Sensationalism, psychoanalysis, and the quest to understand Leopold and Loeb thereby fused.

As the first alienists to have access to Leopold and Loeb and to dissect their personalities, Hulbert and Bowman wielded considerable power in delineating the issues that would define psychological explorations of the Leopold-Loeb case. In their decisions of what elements of Leopold and Loeb's lives to emphasize, and how

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*Times*, 28 July 1924; "Crime Urge Held Guiding Force of Leopold and Loeb," *Los Angeles Times*, 28 July 1924.

<sup>67</sup> Charles Ponce de Leon, *Self-Exposure: Human-Interest Journalism and the Emergence of Celebrity in America, 1890-1940* (Chapel Hill: U of NC P, 2002), 275.

<sup>68</sup> "Leopold Loses Dignity," *Chicago Daily News*, 4 Aug. 1924.

to interpret them, the alienists were creating a micro-narrative of the psychological developments that led up to the Franks murder, which proved fundamental to the formation of the nascent narrative of the Leopold-Loeb case as a whole. Hulbert and Bowman brought together the disparate threads that had already surrounded the case, framed them, and added elements of their own that they uncovered and/or shaped. The two doctors focused on three major areas which had the strongest impact in defining Leopold and Loeb's criminality: the two teenagers' childhoods, their fantasy lives, and, most importantly, their relationship with one another.

The two doctors considered the most important influence in Loeb's life to be his governess, Emily Bishop (Emily Struthers during the time she worked in the Loeb household). Bishop oversaw Loeb from age four to age fifteen, and according to the report, though she cared about him, she warped his mind inadvertently. Hulbert and Bowman had the opportunity to interview Bishop when she travelled Chicago after hearing of Loeb's arrest, and she received more attention – and criticism – than any other single person in the report except for Leopold and Loeb. The doctors deemed her a “paranoid personality” possessed of “some peculiar sexual ideas” and found that “she shows no real insights into childhood psychology and is quite plainly a person devoid of the understanding necessary to deal properly with children.”<sup>69</sup> Transferring her problems onto her charge, she usurped the affections he should have reserved for his parents, kept him sheltered from the realities of sex, and pushed him too hard in disciplinary and academic matters. As a result, many of Loeb's personality problems were reflections of her impact upon him.

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<sup>69</sup> Hulbert and Bowman, *Richard Loeb*, 18, 22.

By the time of the Franks murder, when he was eighteen, Loeb had a life of superficial ease and success in social and academic matters that masked an extremely disturbed inner life. Handsome and charming, he was popular with both platonic male friends and with female girlfriends. Although a lazy student by his own account, Loeb graduated from the University of Michigan at seventeen, supposedly the youngest graduate in the school's history.<sup>70</sup> He was prone to mood swings and transient depression, and had a longstanding tendency towards antisocial behavior. Since childhood, he had lied habitually, perhaps compulsively. Some lies were self-aggrandizing, some self-serving, and some utterly pointless. He had been stealing for fun since he was eight years old. When he entered college at fourteen, he was acutely aware of his youth and relative inexperience, and drank and had sex to prove himself to his older peers. He was, according to Hulbert and Bowman, largely without conscience and defined by a deep sense that he was inadequate and did not belong.

As he grew older, Loeb increasingly sought refuge from his discontent in an elaborate and unhealthy fantasy life that affected his relationship with the real world and led him to his alliance with Leopold. Loeb often fantasized about himself as a famous prisoner admired by large crowds, and a master criminal who plotted brilliant schemes and evaded detection.<sup>71</sup> An avid reader of detective stories, from age twelve until shortly before the Franks murder he made a game of following friends and family members and fantasizing about robbing them. In his more intricate fantasies,

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<sup>70</sup> Information about Loeb's personal history comes from Hulbert and Bowman, *Richard Loeb*. On Loeb as the youngest graduate in the history of the University of Michigan: Baatz, 50.

<sup>71</sup> One almost cannot help noticing that in the Franks crime, although Loeb did not achieve his fantasy of being the perfect criminal, he did achieve his goal of becoming a famous prisoner. Many people, especially young women, clamored to see him and professed their support, and even those who condemned him still offered him the special sort of recognition that came with notoriety. According to the joint report of the alienists who testified, Loeb acknowledged that he was rather enjoying his time in prison. McKernan, 159.

he always had one or more accomplices, because it was important to him that there be someone to appreciate his skill.<sup>72</sup>

Leopold's childhood was far sadder. He was raised by a series of three governesses, with none of whom he had as long or close a relationship as Loeb had had with his own. The first of them, according to the alienists, helped to instill in Leopold some of his more innocuous interests, specifically languages and religion. The third of them, Mathilda Wantz, sexually and emotionally abused Leopold and his brother Sam throughout her time with the family, which spanned from the time Leopold was six to when he was twelve. Hulbert and Bowman found that that Wantz had warped Leopold's ideas of what was normal.<sup>73</sup> Later in 1924, an edited version of the report prepared for publication gave a fuller assessment of the psychological damage Wantz inflicted:

This woman, of very peculiar mentality, was so close to the boys [Leopold and his brother] that the boys, especially the younger one [Leopold] took her abnormal ideas as normal. She gave him a wrong original conception about sex, about theft, about right and wrong, about selfishness and about secrecy. He was so constituted that he never was able to emancipate himself from her erroneous teachings and mistakes.<sup>74</sup>

Awkward and egotistical, Leopold never discovered the same sort of social acumen as Loeb, and had few friends over the course of his life. For reasons not entirely clear, at age five he entered a girls' school of which he was one of only a few boys attending. His parents transferred him to a co-educational school when he was eight, but he was painfully aware of a feeling that he did not fit it in, and the other boys teased him. As a teenager, he began to value his intellect above all else, and to

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<sup>72</sup> Hulbert and Bowman, *Richard Loeb*, 71.

<sup>73</sup> Hulbert and Bowman, *Nathan Leopold*, 17-22; Higdon, *Crime of the Century*, 199.

<sup>74</sup> Hulbert and Bowman, in McKernan, 111.

consciously eschew his own emotions. His mother, infirm since his birth, died when he was sixteen, strongly affirming his budding atheism and his determination to shed his emotions.<sup>75</sup>

Leopold's fantasy life was strongly rooted in several different variations of a fantasy about a king and a slave or slaves. He sometimes put himself in the role of a slave, at other times as the king. According to Hulbert and Bowman, Leopold said he opted to be the slave 90 percent of the time.<sup>76</sup> He first began incorporating people he knew into the fantasy roles at age summer camp when he was twelve. He imagined himself the slave to a "well-developed and to his mind...a very good looking boy of eighteen" who was then working as a counselor.<sup>77</sup> The sexual aspects of the fantasies were implicit in the report, but clear nonetheless. The alienists noted that the fantasy affected Leopold's perceptions and actions towards that person in the real world, leading specifically to an inability to see fault in Richard Loeb.<sup>78</sup> The rewritten excerpts of the report in 1924 attribute to Hulbert and Bowman hinted at an even more direct explanation for how Leopold's fantasies contributed to the Franks murder: "his phantasies mean so much to him that they have become compulsions and have permitted whoever he selected to be king...to do with him as the king thought, without the patient using his critical judgment as to what is right or wrong."<sup>79</sup>

Decades after the sentencing hearing was over, Leopold claimed that the defense alienists had been mistaken about his fantasies, and in fact were reshaping his

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<sup>75</sup> Summaries of Hulbert and Bowman's findings on Leopold come from *Nathan Leopold*.

<sup>76</sup> Hulbert and Bowman, *Nathan Leopold*, 63.

<sup>77</sup> Hulbert and Bowman, *Nathan Leopold*, 65-66.

<sup>78</sup> Hulbert and Bowman, *Nathan Leopold*, 67-68.

<sup>79</sup> Hulbert and Bowman, in McKernan, 123.

fantasies to suit a specific interpretation of the crime. He told a reporter that that he had been the king 90 percent of the time, not the slave, and was emphatic that he never put Richard Loeb directly into one of the fantasy roles. The psychiatrists, he went on, were looking for an explanatory model for the crime, and when they seized on the idea of Leopold as the slave and Loeb as the king, he went along with it.<sup>80</sup>

Leopold might have been trying to challenge the alienists because he found his own version of his fantasy life less embarrassing. But, considering the extent to which Leopold's subjugation to Loeb came to define perceptions of the case – a trend that Leopold himself heartily advocated even as he challenged the alienists' description of his fantasies – Leopold's charge that the alienists were adapting their material to suit their conclusions and explain the crime is noteworthy nonetheless. In any event, the alienists' version of Leopold's family life came to dominate perceptions of it.

After Leopold and Loeb became friends in 1920, when Leopold was fifteen and Loeb fourteen, their activities took a sinister turn, though they hardly established themselves as criminal masterminds. They started by cheating at bridge, and their activities quickly escalated to theft and vandalism. After Loeb figured out that the key to his mother's electric car worked on all cars of that model, they stole two on separate occasions and took them joyriding. Other nights, Leopold would drive around the city while Loeb hurled bricks through store windows. They set fire to a few shacks and outbuildings, and phoned in false alarms to police and fire departments. By the year of the Franks murder, they had escalated to plotting enterprise crimes to heighten the thrill. They worked out a detailed plan to rob a

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<sup>80</sup> John Bartlow Martin, "Nathan Leopold's Desperate Years: Murder on his Conscience," part I, *Saturday Evening Post* 227, no. 40 (2 Apr. 1955), 86.

friend's wine cellar, and twice tried to carry it out, taking a chisel covered with tape and two revolvers with them. Both times they gave up. They also plotted to rob Loeb's former fraternity house in Ann Arbor, taking the same implements as in the wine cellar burglary. That plan went out off without a hitch; it was then that Leopold stole the typewriter on which he later composed the ransom note.<sup>81</sup> The Hulbert–Bowman report hinted at other, more serious crimes, but did not provide details, adding another mystery to the case.<sup>82</sup>

All of this information fascinated readers, but Hulbert and Bowman's most enduring contribution to the burgeoning Leopold-Loeb narrative came from their characterizations of the power dynamics of Leopold and Loeb's relationship. Before the report, the press had focused on Leopold as the mastermind of the team, the evil genius who ensnared the more wholesome but suggestible Loeb. Hulbert and Bowman did much to change that perception, if not completely, making Loeb out to be the leader and Leopold a submissive partner. Leopold and Loeb's fantasy lives, at least as the alienists described them, and the two young men's self-descriptions of their joint criminal escapades certainly indicated that Loeb was the chief instigator. But the doctors also revealed that Leopold and Loeb had formalized Loeb's ostensible dominance in a criminal compact. On the drive back to Chicago after the Ann Arbor burglary, the two budding criminals had a heated argument and came close to terminating their friendship. To avoid that outcome, "it was agreed that the patient [Loeb] should have complete domination over his companion so that he might call

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<sup>81</sup> Hulbert and Bowman, *Nathan Leopold*, 89-96.

<sup>82</sup> Loeb made reference to four criminal acts preceding the murder, designated A, B, C, and D. Hulbert and Bowman found it "forensically inadvisable" to ask for specifics about what those crimes were; Hulbert and Bowman, *Richard Loeb*, 93. Hal Higdon theorizes about the ABCD crimes in *Crime of the Century*, pp. 249-260.

upon him whenever he wished for complete obedience” by invoking an agreed upon phrase.<sup>83</sup> The same night, Loeb raised the possibility of kidnapping a boy for ransom.

According to the report, Loeb, although on the surface the better socially adjusted of the two, was the more criminally inclined. Even before the agreement on the trip back from Ann Arbor, it had been he who instigated and apparently led his and Leopold’s schemes. He spiced up his plans and brought them closer to his fantasies of elaborate criminal schemes by communicating with Leopold through a code. The crimes themselves were not what gratified Loeb. He took great pleasure in the feeling of superiority that came from carefully planning a crime and escaping detection. Even in the Franks case, he did not look forward to the murder itself, but considered it a necessary step in getting away with the ransom. After both the Franks murder and his arsons, he chatted with people about his crimes, soliciting and offering theories about them and savoring his conversation partners’ ignorance of his guilt. In all, the volume of the report on Loeb described a strongly unlikeable person, lazy, self-centered, irresponsible, and deeply amoral.

Hulbert-Bowman was far kinder to Leopold. The report humanized him by uncovering a past and an inner life that, while indicating deep psychological dysfunction, made him appear more wounded than malicious. He might not have been as photogenic or superficially appealing as Loeb, but, as historian Paula Fass argues, “one could hardly read Hulbert and Bowman’s reports and not be affected by the fragile loneliness of Leopold’s childhood, scarred by feelings of physical inferiority, the sexual abuse of a governess, and the loss of his mother.”<sup>84</sup> His persona of the

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<sup>83</sup> Hulbert and Bowman, *Nathan Leopold*, 97-98.

<sup>84</sup> Fass, “Making,” 933-934.



emotionless, calculating figure who sought to position himself above the rest of humanity masked a damaged young man who tried to eschew emotion as a way of eschewing pain. His one point of human contact was Loeb, whom Leopold judged to be closer to the “Perfect Man” than anyone else, including himself. As Leopold told the doctors: “It was blind hero-worship. I almost completely identified myself with [Loeb].”<sup>85</sup>

Although the alienists did not accept at face value that one partner or the other was truly the driving force behind Leopold and Loeb’s criminal acts, the media furthered perceptions of Loeb as leader and Leopold as follower. Papers oversimplified the alienists’ findings in headlines such as “Loeb Master Mind, Leopold his Slave, Alienists Declare,” or “Loeb ‘Master Mind’ of Franks Slaying, Alienists Report.”<sup>86</sup> In the rhetoric of the alienists and in the eyes of the law, Leopold and Loeb were equally responsible for Robert Franks’s murder, and the pitiful side of Leopold that the report exposed was not enough to exonerate him. But the new perception of Leopold as the submissive participant in the Franks murder, accurate or not, added a new layer of mystery to his involvement, and to the case generally: if Leopold was by far the smarter of the two, and not the one with greater criminal tendencies, then why did he agree to the murder, and why did he take, at least supposedly, a subservient position to Loeb?

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<sup>85</sup> Hulbert and Bowman, *Nathan Leopold*, 68.

<sup>86</sup> “Loeb Master Mind, Leopold his Slave, Alienists Declare,” *Washington Post*, 28 July 1924; “Loeb ‘Master Mind’ of Franks Slaying, Alienists Report,” *New York Times*, 28 July 1924; “Crime Urge Held Guiding Force of Leopold and Loeb,” *Los Angeles Times*, 28 July 1924.

### THE ALIENISTS' TESTIMONY

The Hulbert-Bowman report included some brief psychoanalyses of the unconscious drives that compelled its subjects, but the full explanation of what Leopold and Loeb got out of their relationship, and the full terms of their compact, awaited the formal testimony of the defense alienists. Starting four days after Hulbert-Bowman leaked in the papers, the defense's psychiatric witnesses provided direct interpretations of Leopold and Loeb's personalities, relying for information on the report and their own sessions with the two defendants. The experts' testimony overlapped heavily with the report, and it can be hard to distinguish one from the other; Hulbert was even one of the witnesses. But, at base, the expert witnesses built on the Hulbert-Bowman report's descriptions of Leopold and Loeb, and provided more elaborate analyses of the significance of the traits and behaviors that they and/or the report described. With that testimony, the emotional and sexual significance of Leopold's infatuation with Loeb became one of the most enduringly fascinating and contentious characteristics of the case. The alienists tried to explain it from the stand, but were unable to settle the matter. Most of the people who came after them, in 1924 and throughout the decades that followed, made clarifying it a key part of their work.

The content of the witness's testimony, and their specialties, varied somewhat –Hulbert, the endocrinologist, focused more than his colleagues on the physical factors that affected Leopold and Loeb's personalities – but it is clear they collaborated closely. Their basic conclusions, and the elements of Leopold and Loeb's personalities they emphasized, were very similar, sometimes to the point of being repetitive. They all drew connections between each subject's intellectual life,

his emotional life, and his fantasy life. They all found both Leopold and Loeb to be emotionally immature and lacking adequate emotional responses, particularly remorse. They all used social standards of normality to reach clinical diagnoses of pathology. A joint medical report on which most of the expert witnesses collaborated, for example, determined that one of the signs of Leopold's unhealthful disconnect with reality was "the extent to which the ideals of the boy...deviated from what might have been expected of him in his social setting."<sup>87</sup> And finally, they all found that the two boys' relationship, itself a product of these maladjustments, was a *sine qua non* of the Franks murder for both of their subjects. The dynamic that they described defined the two murderers for generations.

In the introduction to the doctors' joint report, the doctors made it clear that, while both of their patients were emotionally disturbed in different ways, the Franks murder came from the collision of their respective disturbances:

An unbiased estimate of the facts pertaining to this association between the two defendants leads us to the conviction that their criminal activities were the outgrowth of a unique coming-together of two peculiarly adjusted adolescents, each of whom brought into the relationship a long-standing background of abnormal mental life.<sup>88</sup>

Leopold and Loeb's maladjustments were, depending on how one looked at them, either mutually complementary or mutually destructive. In Leopold, Loeb found obedience, adoration, and collaboration in his various schemes, including the kidnapping, ransom, and murder that would have been the ultimate of Loeb's fantasies. In Loeb, Leopold found someone whom he could follow without consciously betraying his emphasis on the intellectual over the emotional. Leopold

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<sup>87</sup> White, et al., in McKernan, 148. Like the Hulbert-Bowman Report, McKernan's sourcebook edited the text of the doctors' report.

<sup>88</sup> White, et al., in McKernan, 141-142.

was driven to establish himself as a superior being, to turn his alienation into a matter of defiant choice rather than the source of a burdensome loneliness.<sup>89</sup> Leopold saw Loeb, however, as a fellow superior, someone with whom Leopold could associate without losing his sense of supremacy over everyone else.

For all this, however, the alienists did not see Leopold as the helpless devotee that much of the press in 1924 and many portrayals of him in ensuing years described. The alienists went to pains to make it clear that, despite Leopold's loneliness, his superficial subjugation to Loeb, and his pathetic reasons for participating in the Franks murder, he wielded considerable power in the relationship. Dr. William White testified that Leopold's ability to manipulate Loeb made it impossible to separate their two personalities or designate a leader, a position backed up by much of the evidence unearthed before the defense alienists' testimony.<sup>90</sup> Even when Leopold fantasized about being a slave, the slave was often powerful and not entirely subservient to the king. Nor was Leopold simply along for the ride in his and Loeb's criminal escapades. When Loeb's nerve faltered, Leopold propelled their criminal escapades in order to keep the relationship going.<sup>91</sup>

Leopold was also integral to the planning of the Franks kidnapping and murder, and when the time came he was an active participant. After both kidnappers learned that a body had been found, which they knew could soon be identified as Robert Franks, Loeb wanted to abandon the ransom pickup, but Leopold insisted they try to go through with it, wanting to see his plan through.<sup>92</sup> Also, although Leopold

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<sup>89</sup> William White, Sentencing Hearing Transcript, vol. 2, 1327-1328.

<sup>90</sup> William White, Sentencing Hearing Transcript, vol. 3, 1386-1387.

<sup>91</sup> Hulbert and Bowman, *Nathan Leopold*, 96.

<sup>92</sup> Baatz, 97.

usually maintained he got no real thrill from the Franks crime and agreed to do it for Loeb's sake, he still thought of it as a shared venture, and one that did intrigue him. Leopold was driven towards new experiences, the cultivation of intellect, the suppression of emotions, like remorse or guilt, and proving his own superiority, all pursuits compatible with attempting the perfect crime. In his confession, he said "the thing that prompted Dick to want to do this thing *and prompted me to want to do this thing* was a pure love of excitement, or the imaginary love of thrills, doing something different" [emphasis added].<sup>93</sup>

Nevertheless, the perception of Leopold as helpless before an abnormal love that kept him from stopping himself from participating in the Franks murder began to take root. In the post-World War II era, when Leopold sought parole, he deflected some of the blame for his and Loeb's crime by describing himself as helplessly in the thrall of his adoration for Loeb, drawing on and adapting popular perceptions that had lingered since 1924. The press and many postwar psychiatrists abetted him in that effort. But the alienists in 1924 had not pointed to Leopold's feelings towards Loeb as an exculpatory element of his participation in the murder, indicative that a greater blame lay with Loeb; rather, the defense experts had cited Leopold's adoration for Loeb as the *motive* for his participation in the crime. For Loeb, the Franks kidnapping and murder was the means and the end, an act committed for its own sake. For Leopold, it was the means to an end, his relationship with Loeb.

The sexuality of that relationship was largely implicit in 1924, at least compared to what it would be twelve years later, when Loeb's death in prison prompted a new emphasis on sexuality in characterizing the case. But it was clear

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<sup>93</sup> Nathan Leopold, qtd. in Baatz, 91.

nonetheless, and it was beginning to take on key definitional power in the Leopold-Loeb narrative.

### THE DEFENSE ALIENISTS AND SEXUALITY

By the time the alienists' testimony was over, argues historian Paula Fass, they had firmly established the case as a precedent event for a new type of crime in which the psychology of the offenders was key: "By removing an obvious social purpose from their [Leopold and Loeb's] crime (ransom) and by attaching to it (possible) sexual goals, the defense psychiatrists had refashioned the nature of crimes against children and given them a psychological home" (parentheses in original, brackets added).<sup>94</sup> The defense experts sought to demonstrate that, even though sex was not a direct factor in Robert Franks's murder, it still helped to define Leopold and Loeb's relationship and explain why they killed Franks. The alienists, moreover, did not have to rely on speculation; they used specific information that Leopold and Loeb provided. They did much to delineate how people perceived sexuality in the case and its importance for understanding Leopold and Loeb – both individually and as a pair – and thus how it connected to Robert Franks's murder. They had done the same for other elements of their patients' lives, but their work on sexuality was particularly consequential. It had a special place in psychoanalytic thought, held a special prominence in the cultural rebellion of the 1920s, and was an area in which the alienists brought out much new and shocking information about the two defendants.

The alienists drew the first non-speculative connections between same-sex sexuality and criminality in the case. Both before and after Leopold and Loeb's

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<sup>94</sup> Fass, *Kidnapped*, 83.

confessions, many people had suspected that such connections existed, most likely as a direct motive, i.e. that Franks's assailant(s) assaulted or intended to assault him. People had also suspected a sexual relationship between Leopold and Loeb. Rumors had surrounded them as early as 1921, when Loeb was a fraternity pledge at the University of Michigan. His prospective brothers had made his membership contingent on his not seeing Leopold anymore, to offset suspicions of a homosexual relationship between the two.<sup>95</sup> (Loeb did end his association with Leopold, leading Leopold to leave the school the following academic year; the two did not associate again until 1923.)<sup>96</sup> More recently, shortly before Leopold and Loeb's confessions, the police obtained a letter from Leopold to Loeb implying a sexual relationship.<sup>97</sup> Multiple papers reprinted the letter in its entirety, save for their censoring of the word "cocksuckers," the only directly sexual reference in the letter. Even without the epithet, many readers could have contextually inferred the omitted word or a synonym.<sup>98</sup> Hulbert and Bowman had also made several direct or indirect references to their two subjects having a sexual relationship, and to Leopold having had same-sex inclinations and experiences prior to meeting Loeb. The alienists, however, brought out, dissected, and interpreted the significance of Leopold and Loeb's sexualities on the stand.

Leopold and Loeb had had their first sexual contact in 1921, and in 1923 arranged a formal *quid pro quo* of sexual favors for criminal acts.<sup>99</sup> Hulbert and

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<sup>95</sup> Hulbert and Bowman, *Nathan Leopold*, 90.

<sup>96</sup> Baatz, 47.

<sup>97</sup> Higdon, *Crime of the Century*, 83-84.

<sup>98</sup> "Richard Loeb as Best Friend, Letter's Theme," *Chicago Daily Tribune*, 31 May 1924; "Loeb, Leopold Tell How They Lured Boy into Car, Slew Him," *Chicago Daily News*, 31 May 1924.

<sup>99</sup> Some historians, such as Paul Franklin, and at least one defense alienist, Bernard Glueck, have referred to Leopold and Loeb's sexual contract as going back to 1921. The Hulbert-Bowman report

Bowman had made a brief reference to a “contract” in which Leopold would accede to Loeb’s requests whenever the latter used the phrase “for Robert’s sake,”<sup>100</sup> formed on the night the two first began discussing a kidnapping scheme. The alienists on the stand elaborated on Loeb’s side of the bargain: he agreed to participate in sexual acts with Leopold on agreed upon dates, including a certain amount of role playing that let Leopold gratify his sexual fantasies the same way he helped Loeb gratify his criminal ones.<sup>101</sup>

The alienists seem to have been conflicted about how to approach Leopold and Loeb’s sexual relationship. Bernard Glueck, head of the psychiatric clinic at Sing Sing prison, who the *Daily News* had touted as the most likely to discuss sex, testified that “the final relation of his [Loeb’s] development into the Franks situation was made possible” by the sexual/criminal compact with Leopold. He went on to say that “it was significant to me that the first serious delinquency that he told me about...occurred on the same day when those other intimate biological phases [Leopold and Loeb’s first sexual contact]...occurred.”<sup>102</sup> Yet Glueck also, knowing that the papers had been barred from repeating his testimony about sex, tried to

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indicates that, while Leopold and Loeb’s sexual relationship went back that far, the formal *Quid Pro Quo* began in November 1923. Of course, such an arrangement probably played a part in Leopold and Loeb’s relationship before they formalized it. They began cheating at bridge, their first caper together, soon after their first sexual encounter. Paul Franklin, “Jew Boys, Queer Boys, Rhetorics of Antisemitism and Homophobia in the Trial of Nathan ‘Babe’ Leopold Jr. and Richard Loeb,” *Queer Theory and the Jewish Question*, 121-148, 139; Higdon, *Crime of the Century*, 149. Bernard Glueck, Sentencing Hearing Transcript, vol. 3, 1690-1691; McKernan, 98.

<sup>100</sup> Hulbert and Bowman, *Nathan Leopold*, 97-98.

<sup>101</sup> William Healy provided a particularly detailed summary of the arrangement: Sentencing Hearing Transcript, vol. 3, pp. 1449-1453.

<sup>102</sup> Bernard Glueck, Sentencing Hearing Transcript, vol. 3, pp. 1690-1691.



downplay the significance of Leopold and Loeb's sexuality to a *Daily News* reporter.<sup>103</sup>

The rest of the alienists were similarly dismissive of Leopold and Loeb's sexuality, at least when discussing it publicly. They emphasized the *psychological* complementarity of Leopold and Loeb's personalities over their physical relationship, and deemed their sexual activities childish or immature, distinct from those of adult homosexuals. Healy, for example, testified that experimentation of Leopold and Loeb's sort was quite common, and that "there are many children, very innocent children of fine people who get into many things of that sort."<sup>104</sup> The alienists' analyses did not always match those assertions. They spoke of Leopold's *activities* with Loeb as childish, and his infatuation with Loeb as unhealthy for a multitude of reasons. But they also described a man who admitted, in his fantasies and his life, that he was more sexually attracted to men than to women.<sup>105</sup> More than likely, the members of the defense team were walking a fine line between providing their honest evaluations and wanting to let Leopold and Loeb avoid some of the stigma that would have otherwise attached to their activities.

In their reports for the defense, as opposed to their public testimony, the alienists were sometimes quite blunt in describing one or both of the two subjects as homosexual. For example, Glueck, the alienist whose expertise on sexual matters the *Daily News* had touted, joined the chorus of other defense experts in testifying that Leopold and Loeb's relationship was childish.<sup>106</sup> But in his contribution to a joint

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<sup>103</sup> "Slayers' Baseness is Depicted," *Chicago Daily News*, 4 Aug. 1924, p. 1.

<sup>104</sup> William Healy, Sentencing Hearing Transcript, vol. 3, p. 1561.

<sup>105</sup> William Healy, Sentencing Hearing Transcript, vol. 3, pp. 1451-1452.

<sup>106</sup> Bernard Glueck, Sentencing Hearing Transcript, vol. 3, p. 1711.

report composed by several of the defense alienists, Glueck found Leopold's sexuality key to his infatuation with Loeb. According to him, Leopold was driven by a sense of revulsion at his own sexuality. He embraced intellectualism and buried his feelings so that he would not have to face the urges he could not accept. Loeb was the only person with whom Leopold could embrace his impulses, and achieve what Glueck called his "complete self-realization as a homo-sexual."<sup>107</sup> Glueck's conclusions were thirty years ahead of his time, characterizing Leopold in a manner that would come to dominate many perceptions of the case in the post World War II era.

#### POPULAR PERCEPTIONS OF LEOPOLD AND LOEB'S SEXUALITY

The effects of Leopold and Loeb's sexual relationship on perceptions of their criminality is somewhat ambiguous and a source of contention among scholars. The specifics of Leopold and Loeb's same-sex activities, and their contract, did not make it into the newspapers. Judge Caverly barred reporters from printing the material, and in spite of reporters' best efforts, tried to keep sexually related testimony out of their earshot. He also cleared the court of women, including female reporters, deeming the material inappropriate for their ears.<sup>108</sup> This reticence leads Paula Fass to conclude that "the public discussion of sexuality was marginalized or shortcircuited and largely restricted to rumor and innuendo. Perhaps this was because the story that became central in the press was about childhood, and because the boys' story was normalized

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<sup>107</sup> Quoted in Baatz, 264.

<sup>108</sup> John Caverly, Sentencing Hearing Transcript, vol. 3, pp. 1449-1453.

at a time when heterosexuality dominated public discussions of youthful misbehavior.”<sup>109</sup>

Nevertheless, same-sex sexuality was a strong undercurrent in the courtroom proceedings, and the media’s coverage thereof, as even Fass acknowledges.<sup>110</sup> The alienists’ bluntest testimony might have been confined to the bench, but, although the papers did not print the details of the sexual acts from which Glueck tried to rebut the stigma by describing them as childish, the papers did reprint Glueck’s rebuttal.<sup>111</sup> Moreover, Robert Crowe, the head prosecutor, frequently connected Leopold and Loeb’s crime to aberrant sexuality in open court. At one point he asked defense alienist William Healy to confirm that “in [Leopold and Loeb’s] pact these boys agreed to form acts of perversion, didn’t they?” The defense successfully objected, but spectators could hardly have unheard what Crowe had said. Crowe raised the issue of “perversion” or “degeneracy” several other times during the trial, and occasionally insinuated or outright announced that the real motive of Franks’ abduction had been sexual assault.<sup>112</sup>

The press, eager to abet Crowe’s circumvention of Caverly’s restrictions, printed his remarks *verbatim*, as well as similar statements about Leopold and Loeb’s “sex lives” or “forms of perversion” with one another. The papers left the full details of Leopold and Loeb’s activities and the precise terms of their *quid pro quo* compact

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<sup>109</sup> Fass, 941, 940.

<sup>110</sup> Fass, 941.

<sup>111</sup> “Darrow Puts Third Alienist on the Stand,” *Chicago Daily News*, 5 Aug. 1924, 1, 3.

<sup>112</sup> Robert Crowe, Sentencing Hearing Transcript, vol. 3, pp. 1561-1563; vol. 4, 2223; David Churchill, “Queer Histories of a Crime, Representations and Narratives of Leopold and Loeb,” *Journal of the History of Sexuality* 18, no. 2 (May 2009): 303.

unstated, but provided the gist nonetheless.<sup>113</sup> Considering that information about Leopold and Loeb's heterosexual activities was readily available in reprints from the Hulbert Bowman report many people could probably fill in at least the general terms of the relationship that had been conspicuously sequestered for the sake of propriety.<sup>114</sup>

Several historians have used these and other elements of the case's discourse to argue that same-sex sexuality – though often an ambiguous, somewhat contradictory, and only partially articulated aspect of the case in 1924 – was more central to popular perceptions of Leopold and Loeb's criminality than Fass acknowledges.<sup>115</sup> Paul Franklin criticizes Fass for underestimating the pervasiveness of unarticulated beliefs about the role of sexuality in the case, writing that “what went unsaid in the course of the investigation and prosecution of Leopold and Loeb did so precisely because it went without saying.”<sup>116</sup> David Churchill argues that the press used coded language to convey that Leopold and Loeb were homosexual far more often than it bluntly described them that way: “The ideological constructions of Leopold and Loeb as sexually deviant in the earliest journalistic accounts were seldom blatant declarations that the young men were homosexual. Instead, the newspaper employed a referential strategy, matching Leopold and Loeb to ‘queer’

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<sup>113</sup> Genevieve Forbes “Expert Paints Crime-Twins,” *Chicago Daily Tribune*, 5 Aug. 1924; “Word by Word Encounter of State, Defense” *Chicago Daily Tribune*, 6 Aug. 1924.

<sup>114</sup> A version of the report published in 1924 included references to Leopold's lack of interest in his sexual encounters with women and Loeb's treatment for a venereal disease at 15. Hulbert and Bowman, in McKernan, 85, 124-125.

<sup>115</sup> Predating the scholars discussed here, cultural critic Leslie Fiedler, writing in 1958, assumes that “deviant” sexuality was a factor in public perceptions of the case in 1924. However, Fiedler was writing at a time when the same-sex aspects of the case had undergone renewed popularity – and a revision of their characteristics – as a subject of contemporary discussion, which might have colored his perception of 1924.

<sup>116</sup> Franklin, 122.

things or people.”<sup>117</sup> In either case, the pertinence of Leopold and Loeb’s sexuality for explaining the Franks murder in press accounts was far less direct than those offered by the alienists on one end of the spectrum or Crowe at the other, but those accounts were no less real or important for how people thought about the two defendants. They might, in fact, have been more important, given their pervasiveness.

Readers were very attuned to hints about sexuality’s connection to the Franks murder. Leopold and Loeb’s confessions, and the coroner’s finding that Franks had probably not been molested, had not entirely dispelled suspicions – nurtured in the press before Leopold and Loeb’s confessions – that the Franks murder was a sexual crime.<sup>118</sup> Even for those people who believed that Franks had not been the victim of a sexual assault *per se*, the loss of that explanation for the crime only raised more questions in light of Leopold and Loeb’s sexual relationship. That Leopold and Loeb were lovers seemed possibly to confirm suspicions that a certain type of criminal had killed Franks, but the relationship itself was not *a priori* an explanation for why they had killed Franks. That sexuality was not a direct motive intensified the imperative for an explanation of *how* it fit into the crime. The papers, well aware of this imperative, used it to entice readers.<sup>119</sup>

Through the combination of the court testimony and the press’s coverage of the case, sexuality began to take a distinct place in the dynamics of Leopold and Loeb’s relationship. In particular, as Franklin’s study of the case shows, Leopold

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<sup>117</sup> Churchill, 298.

<sup>118</sup> Higdon, *Crime of the Century*, 54.

<sup>119</sup> The *Tribune*, for example, tantalized readers with the prospect that he, the most Freudian of the experts, would probably provide the fullest explication of his subjects’ sex lives. “Call Four More Alienists,” *Chicago Daily Tribune*, 4 Aug. 1924.

became the “true homosexual” of the pair.<sup>120</sup> The defense alienists pioneered this characterization, abetted by Leopold and Loeb themselves. Leopold had admitted to the alienists that he preferred his sexual contacts with Loeb to his experiences with women, and that Loeb was not the first male with whom he had had sexual contact.<sup>121</sup> Loeb, in contrast, merely confirmed to the alienists that he had acquiesced to Leopold’s sexual propositions to secure Leopold’s cooperation in his, Loeb’s, criminal schemes. The alienists seem to have accepted Leopold and Loeb’s characterizations of their relationship at face value: Leopold did not enjoy the crimes, though he did not really mind them, and Loeb did not enjoy the sex, but each went along with the arrangement because of the benefits he gleaned from it. The alienists did not dissect Loeb’s sexuality with anywhere near the attention they did Leopold’s. Even William White, who described both Leopold and Loeb possessing sexualities “of a more or less homo-sexual character,” described Leopold as the more firmly homosexual of the two.<sup>122</sup>

The dynamic of Leopold as the homosexual and Loeb as the reluctant sexual partner took on a greater prominence in the public sphere than it had in the alienists’ work. Where the press described Leopold as bookish and asocial, they presented Loeb, sometimes in direct juxtaposition to Leopold, as a ladies man, and made much of the attraction he held for many young women even after his arrest.<sup>123</sup> The *Tribune* reprinted an alienist’s testimony that Loeb found his “sex life” with Leopold

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<sup>120</sup> Franklin, 132.

<sup>121</sup> William Healy, Sentencing Hearing Transcript, vol. 3, 1451-1452; Hulbert and Bowman, *Nathan Leopold*, 54-55.

<sup>122</sup> William White, Qtd. in Franklin, 121.

<sup>123</sup> Franklin, 132.

“disgusting.”<sup>124</sup> Loeb eagerly boosted perceptions of his heterosexual prowess when talking to reporters, and told the alienists that he hated his sexual contacts with Leopold. (As Franklin points out, his story relied, apparently with some success, on people believing that, “upholding his end of their sexual contract for four full years, Loeb’s capacity for revulsion knew no bounds.”<sup>125</sup>) Friends and girlfriends publicly backed him, rebutting allegations that he was homosexual; several girlfriends were listed as defense witnesses, though only one testified.<sup>126</sup> Evidently, though Loeb had already confessed to child murder, it was important to him and his friends that he not face the stigma of homosexuality. The flip side of the focus on Loeb’s heterosexuality was an implicit recognition of Leopold’s homosexuality. The same day the *Tribune* ran a banner headline about Loeb’s girlfriends, it also ran a story revealing Leopold envied Loeb’s food and drink, because they got to be closer to Loeb than he.<sup>127</sup>

The confirmation of Loeb’s heterosexuality was never entirely successful. When he was killed in prison twelve years after the sentencing hearing, perceptions that he was homosexual and/or a pederast surfaced and thrived. Characterizations of both him and Leopold as gay continued thereafter, and became evidence for an entire range of arguments about sexuality, society, and antisocial behavior. But, within the budding fascination with Leopold and Loeb’s sexuality, a particular fixation on Leopold was taking hold.

## SEXUALITY IN THE 1920S

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<sup>124</sup> John Herrick, “Leopold, Under Scientists’ Eye, Resembles Loeb,” *Chicago Daily Tribune*, 10 Aug. 1924.

<sup>125</sup> Franklin, 139.

<sup>126</sup> “Girl Braves Perjury Cry to Aid Loeb,” *Chicago Daily News*, 7 Aug. 1924.

<sup>127</sup> Genevieve Forbes, “Loeb’s Girl Friends [two words] called”; John Herrick, “Crowe Fences with Alienist for Boys’ Lives,” *Chicago Daily Tribune*, 7 Aug. 1924

The case came at a pivotal moment for American sexuality. As new sexual mores were taking form, it brought together several disparate threads of sexual discourse – including danger, same-sex sexuality, and psychology – to construct Leopold and Loeb as representative of both the boundaries of acceptable behavior and the threat posed by people who traversed those boundaries. The relaxing of traditional sexual mores in the 1920s was perhaps the decade's most striking – and conscious – challenge to the conventions of the past. In the nineteenth century, according to Nathan Hale, American thought about sexual morality “not only confined sexual intercourse within monogamous marriage, but sought to assure purity of thought as well as behavior, partly through reticence about all sexuality, partly through a particularly asexual stereotype of woman.”<sup>128</sup> People challenged and altered those boundaries throughout the early twentieth century, but amid the cultural freedoms of the 1920s, according to John D’Emilio and Estelle Freedman the shift was particularly drastic: “Sexual expression was moving beyond the confines of marriage...as the normative behavior of many Americans.”<sup>129</sup> Within marriage, sexuality no longer needed be thought of exclusively as reproductive. Outside of marriage, premarital sex, though more common, was still the exception rather than the rule, but heterosexual socialization among unmarried youths found a new popularity, as did heterosexual contact short of sex, to an extent. Eroticism, generally speaking, became much more visible during the decade, and women’s sexuality in particular became much more prominent.<sup>130</sup>

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<sup>128</sup> Hale, 4.

<sup>129</sup> John D’Emilio and Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York Harper and Row, 1988), 241.

<sup>130</sup> D’Emilio and Freedman, 241; Dumenil, 130-143.



Hale argues that psychoanalysis owed its rise in America to a great extent to its distinct ability to speak to the anxieties engendered by the changing sexual atmosphere. Emphasizing the importance of healthy, normal sexual drives and the psychological harms that could come from repression, psychoanalysis provided a theoretical framework that simultaneously challenged traditional mores and created a vehicle for determining new ones.<sup>131</sup> Psychiatrists thus led the way in shaping lay perceptions of the normal in sexual modernity, creating a new paradigm that permitted but regulated heterosexual relations along racial and class lines.<sup>132</sup>

Male same-sex sexuality was a central foil against which doctors defined sexual normalcy, and had been long before the ascendance of psychoanalysis.<sup>133</sup> For several centuries, religion and law had dominated how people thought about same-sex sexuality, and the subject was perceived primarily through specific acts. Sodomy, for example, was a sin and crime. In the nineteenth-century, historian Jennifer Terry argues, the subject became medicalized. As same-sex sexuality gained prominence as an issue and doctors gained authority over it, “medical and scientific theories about homosexuality came to form the ground upon which the lines of public debate over the subject were drawn.”<sup>134</sup> Doctors and scientists, and in turn, the public at large, began to understand the homosexual as a distinct type or, to use Michel Foucault’s term, a “species,” a person whose sexuality made him essentially different from people who did not share in it.<sup>135</sup> Among doctors’ first contributions to popular

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<sup>131</sup> Hale, 57-58.

<sup>132</sup> Terry, 75.

<sup>133</sup> The medical and social discourses of same-sex sexuality in men and women often intersected, but were not identical. I focus in this study on the construction of male homosexuality.

<sup>134</sup> Terry, 5.

<sup>135</sup> Michel Foucault, *The History of Sexuality, Volume I: An Introduction*, trans. Robert Hurley, Vintage books ed. (New York: Random House, 1978, 1990), 42-43.

perceptions of homosexuality was to place it within a range of socially unacceptable activities – including sadism, exhibitionism, voyeurism, and bestiality – that they classified as diseases and often referred to by the blanket term “perversion.” Of all the above behaviors, however, homosexuality concerned doctors most.<sup>136</sup> The notion of multiple transgressive sexualities as deriving from a singular condition of “perversion” continued to color medical and popular perceptions of sexuality into the twentieth century, and had important effects for perceptions of the role of sexuality in Robert Franks’s murder.

In defining the homosexual as a species, myriad and often contradictory ideas coexisted in medical discussions. It was at once an affliction and a vice, a psychological condition and a physical one, something that warranted varying degrees of pity, understanding, and condemnation. Most scientific explanations for it combined psychology and biology. Even people who thought homosexuality was psychogenic considered the physical body an important constitutive element of homosexual desire, while influential figures who saw it as a physical disease or deformity nevertheless saw personal choice or inclination as a factor, at least in some cases.<sup>137</sup> Individual scholars fell on different points on the spectrum, from the wholly physical to the wholly psychological or a range of positions in between. However, whether they thought it could be cured therapeutically, or whether they thought homosexuality posed a threat to others, doctors still stigmatized and marginalized it, particularly in America. Terry argues that, generally speaking, American physicians “differed from their European counterparts in their more overt denunciation of

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<sup>136</sup> Terry, 77-78.

<sup>137</sup> Terry, 41, 48.

homosexuality, choosing to argue for punishment and condemnation in most cases rather than pity and acceptance.” The discourse of homosexuality took on new dimension between 1880 and 1920, when American physicians approached it as a distinct consequence of modernity that threatened the nation’s welfare, and the subject became intertwined with the array of anxieties that manifested during that time.<sup>138</sup>

Even those who advocated for greater tolerance of homosexuality considered it a deviation from the presumed normal adult state of heterosexuality. After 1900, psychoanalysts advocated a narrower conception of homosexuality as a psychological phenomenon, and not necessarily one that needed to be cause for special condemnation or persecution. All people, psychoanalysts held, were innately bisexual, and went through a phase of attraction to members of their own sex. Homosexuals were people who had not sublimated those impulses and/or channeled them towards the opposite sex. However, like their predecessors and non-psychoanalytic contemporaries, psychoanalysts constructed and maintained same-sex sexualities as abnormal and pathological.<sup>139</sup>

In the 1920s, the lay public’s interest in same-sex sexuality increased when the cultural rebellion against conventional sexual norms helped create a liminal space for greater visibility of same-sex sexuality in American life. Gay men became the subject of novels, plays, and films as a ‘pansy craze’ swept many American urban areas. At a time when prohibition made much nightlife transgressive, many nightclubs, theaters and speakeasies catered to tourists who enjoyed same-sex themed

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<sup>138</sup> Terry, 116.

<sup>139</sup> Terry, 56, 69.

entertainments precisely because of their transgressive qualities. In New York, which had housed a vibrant gay subculture since the close of the nineteenth century, Greenwich Village became the most famous, or infamous, gay enclave in the country.<sup>140</sup> In Chicago, the Towertown district filled a similar niche.<sup>141</sup> In both districts, a reputation for nonconformity – specifically bohemianism, which in turn people connected to free love and same-sex sexuality – dovetailed with the public's interest in transgressing conventional sexual and social norms.<sup>142</sup>

The popular interest in same-sex sexuality did not indicate an acceptance of it. In many states, continuing a trend that was already underway, doctors forcibly sterilized men and women deemed “insane” because of their homosexuality.<sup>143</sup> In 1919, the new concern about sexual activities among men led the U.S. Navy to persecute both servicemen and civilians during an investigation into its training facility at Newport, Rhode Island. The investigation, which evoked questions about determining what defined a homosexual man, brought behaviors and people once deemed innocent into question and exposed widespread anxieties about same-sex sexuality.<sup>144</sup> In 1920, Harvard launched an investigation into its students, leading to expulsions aimed at purging homosexuals from the student body.<sup>145</sup> Even at the

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<sup>140</sup> Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 227.

<sup>141</sup> Chad Heap, *Slumming: Sexual and Racial Encounters in American Nightlife: 1885-1940* (Chicago: U of Chicago P, 2009).

<sup>142</sup> Both New York and Chicago, in the Harlem and Bronzeville districts, respectively, also harbored distinctly racialized spaces for the expression and spectatorship of alternative sexualities. Chauncey, *Gay New York*, 227, 301-329; Heap, 156, 231-276.

<sup>143</sup> Terry, 82-83. Exact numbers of people sterilized specifically and explicitly for their sexual orientation are hard to determine.

<sup>144</sup> George Chauncey, “Christian Brotherhood or Sexual Perversion: Homosexual Identities and the Construction of Sexual Boundaries in the World War I Era,” *Gender and American History Since 1890*, ed. Barbara Melosh (New York: Routledge, 1992): 72-105.

<sup>145</sup> William Wright, *Harvard's Secret Court: The Savage 1920 Purge of Campus Homosexuals* (New York: St. Martin's, 2005).

height of the “pansy craze,” restaurants and tearooms that catered to homosexuals faced police raids, and works of art with same-sexual themes faced censorship. Many of the patrons of same-sex entertainments were curious about homosexuality precisely because it was a taboo through which to articulate heterosexist mores.<sup>146</sup>

The Leopold-Loeb case brought psychiatry, same-sex sexuality, crime, and older notions of perversion together in a manner that encouraged their association. Historian David Churchill argues that, when the defense alienists treated Leopold and Loeb’s relationship as evidence of the abnormal personalities that limited their responsibility for the Franks murder, they connected their subjects’ sexuality to the crime even if the crime itself was not overtly sexual. Moreover, “for the prosecution [and those who sided with it] the sexual behavior of the young men was further proof of perversion, of the rottenness at the core of Leopold and Loeb’s character. Same-sex sexuality, just like the murder, was a manifestation of the inherently evil nature of the two murderers.”<sup>147</sup> The alienists had used the word “perversion” in connection to specific acts of homosexuality, but State’s Attorney Crowe and the papers used “pervert” as a label. They did not make clear what traits or behaviors defined perverts as a group, only that Leopold and Loeb were a part of it, thus passively or – particularly in Crowe’s case – actively encouraging the association of that group with the Franks murder.

Crowe and the journalists’ references to sexuality connected homosexuality with child murder and/or a broad conceptualization of perversion in three overlapping ways. First, the references to Leopold and Loeb’s sexuality implied, or at least invited

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<sup>146</sup> Chauncey, *Gay New York*, 238, 328.

<sup>147</sup> Churchill, 306.

speculation, that Franks had been the victim of a sexual crime, connecting Leopold and Loeb's activities with one another directly to a sexual act committed against Franks. Crowe, especially, referred to Leopold and Loeb as perverts and hinted that Robert Franks had been molested.<sup>148</sup> Second, public discussions placed Leopold and Loeb into a broad category that encompassed a range of non-reproductive sexual behaviors, keeping perversion an elusive and somewhat amorphous concept, though still a sinister one. Third, and finally, even for people who accepted a narrower, more modernistic conception of Leopold and Loeb as adult men who engaged in sexual relations with other men, the frequent references to that sexuality in articles about the Franks murder still hinted that it explained the crime. Even Clarence Darrow might have alluded to the two boys' compact as proof that they were abnormal and sick: "There is nothing in all of it [the compact] that corresponds with normal life. There is a weird, strange, unnatural disease in all of it which is responsible for this deed."<sup>149</sup>

Whether Leopold and Loeb's sexuality had led to a murder of direct compulsion, or whether homosexuality was indicative of a personality disorder that also manifested itself in antisocial behavior, Leopold Loeb helped facilitate a new heterosexist paradigm that grew out of the 1920s. At a formative time for twentieth century sexual norms, they had committed a murder that could be made to represent an inherent danger posed by men who fit the developing label of "homosexual." The Leopold-Loeb case could therefore seem to justify, even necessitate, the marginalization or persecution of all men who exhibited similar sexual tendencies, placing same-sex sexuality outside the boundaries of acceptable behavior. The case

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<sup>148</sup> Robert Crowe, Sentencing Hearing Transcript, vol. 7, 4184-85, 4201-4202.

<sup>149</sup> Qtd. in Franklin, 139.

did not fully realize this potential in the 1920s, partly because of the thin veil that remained over the sexual dimensions of the case, and partly because the new sexual order with which the case's narrative was intertwined was still emerging. But in later decades, as the case's narrative became increasingly sexualized, so too did the lessons it seemed to bestow.

In sum, then, the position of sexuality in Leopold-Loeb's narrative was muddled and fluid. Beliefs that Robert Franks had been murdered to satisfy predatory lust had been prominent before Leopold and Loeb's confessions, which largely, though not completely, reframed the crime as a youthful thrill killing. As information about the pair came out, the possible connections between Leopold and Loeb's sexual relationship and their decision to murder Franks went largely unexplored in any depth outside of the alienists' work, which was redacted in press accounts. But sexuality remained an important undercurrent in how people perceived and conceived of the two defendants, and in the ensuing decades became much more prominent in the case's discourse. The response to Leopold and Loeb's sexuality in 1924 articulated the basic terms on which interpretations of the sexuality of Robert Franks's murder continued, down multiple avenues in both fictional and nonfictional texts, in some ways into the twenty-first century.

#### CONCLUSION – LEOPOLD-LOEB'S ENDURING RELEVANCE

The final element attached to the Leopold-Loeb case in 1924 that allowed it a recurrent place in American life was the rendering of the case as a cautionary tale, representative of a problem that could recur, in its own or subsequent generations. To most effectively relate the case to modernity, the press made Leopold and Loeb, if not

typical of the youth of the time period, then at least relatable to it. In the process, the Franks murder became more than an isolated incident committed by juvenile delinquents and/or sexual criminals; it became a case study for understanding *a type* of juvenile delinquent and/or sexual criminal. The type that Leopold and Loeb represented was always contested and shifted over time, but the belief that their case established principles about understanding modern criminality began in 1924, and in subsequent decades it allowed writers and other cultural producers to resurrect the case and apply it to issues of their own times.

It was not immediately clear that the case would have such lasting significance; the apparent lack of precedent for Franks's murder could just as easily have led the crime to be framed as a singular aberration. Historian Paula Fass argues that "at first...the popular portrayal of the boys' uniqueness became a kind of substitute for a motive, setting the case apart and in a sense defusing its potential to cause social havoc."<sup>150</sup> The papers portrayed Leopold, in particular, as someone morally foreign to readers, an emotionless mad scientist who killed to test his own philosophical ideals. They used his high intelligence, unusual intellectual pursuits, and limited social life to emphasize his alienness. The approach sold newspapers in the short term, but it raised a dilemma: "If Leopold was an alien fiend, and the case simply a quirk, it was difficult to justify its continuing prominence in the daily press. To make the case significant it had to become a reflection on modern life."<sup>151</sup> In response, the press adapted Leopold and Loeb into representations of "a Fitzgeraldesque type of youth, suffering from ennui, overeducation, or

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<sup>150</sup> Fass, *Kidnapped*, 66.

<sup>151</sup> Fass, "Making," 926.



overindulgence, and especially from intellectual precocity.”<sup>152</sup> The case, which began as a story about the perils of childhood that befell Robert Franks, became about the perils of childhood that befell Leopold and Loeb, and how to help other children avoid them through proper parenting and supervision.<sup>153</sup>

The alienists, and much of the press coverage, agreed that Leopold and Loeb’s dysfunction stemmed largely from a lack of supervision and bad influences in their early lives. The 1920s were a time of acute awareness of the difference between generations, and a prosperous time for behavioral experts, including psychoanalysts, who emphasized the importance of healthy psychological development and offered advice on how parents could ensure it. Especially after the advent of the psychiatric arguments over sentencing, the case provided a grand pretext for the discussion of Leopold and Loeb as counterexamples of childrearing. As it happened, Leopold and Loeb’s parents largely avoided recrimination.<sup>154</sup> Possibly glad for the surrogates, the defense alienists had shifted responsibility to their patients’ governesses.<sup>155</sup> The case’s power to emphasize the importance of childrearing, however, was essentially the same. Many parents could not have helped but see in Leopold and Loeb’s over-privileged and under-disciplined lives, and in the mistakes in their upbringing, a failure from which they could learn, a way to avoid raising children who turned out to be homosexuals and/or murderers. In that sense, the experts managed the tricky fate

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<sup>152</sup> Fass, “Making,” 926.

<sup>153</sup> Fass, “Making,” 939.

<sup>154</sup> Fass, “Making,” 939.

<sup>155</sup> Hulbert and Bowman, in McKernan, 86-89, 110-111. Other behavioral experts, and the press, were not always as exonerative of the parents (see: “Psycho Experts Blame Parents for Precocity,” *Chicago Daily Tribune*, 5 June 1924), but explicit criticisms of the Leopold and Loeb families were still fairly muted.

of making the case about parenting without making it about Leopold and Loeb's parents.

The alienists tried, at least superficially, to assuage parental anxiety. Several of them jointly declared that the dynamic between Leopold and Loeb "made a situation so unique that it will probably never repeat itself. There is justification for stressing the uniqueness of this case if, for no other reason, than that it has created wide-spread panic among parents of young people."<sup>156</sup> But, while the alienists had hoped to avoid a panic and cement their own authority by psychologically deconstructing Leopold and Loeb as unique, the doctors still sought to understand their patients' psychological abnormality through influences present in the quotidian middle class world.<sup>157</sup> Nor were the alienists above using their time in the spotlight to directly position themselves as authorities over everyday life. After his testimony was over, Bernard Glueck told a reporter from the *Tribune* it was critical for children to have parents who were deeply involved their lives, and who took the time and effort to truly get to know their children and teach them about sex.<sup>158</sup>

The press demonstrated some ambivalence towards the alienists' expertise, a sentiment its readers probably shared. Psychology in 1924 was too cutting edge for many people, and the defense alienists' work too tainted by its association with Leopold and Loeb's efforts to avoid the death penalty. But at the same time, it was offering a new explanatory model for the Franks murder. As a result, Fass argues, "the newspapers wanted to have it two ways: to use psychiatric testimony for the

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<sup>156</sup> White, et al., in McKernan, 142.

<sup>157</sup> Fass, *Kidnapped*, 83; Fass, "Making," 926-929.

<sup>158</sup> Maureen Watkins, "Know Children, Expert's Word to Parents" *Chicago Daily Tribune*, 7 Aug. 1924.

information it provided and the authority it gave to simple domestic lessons but to knock psychiatrics off their perch as so much inflated (and overpaid) ego” (parentheses in original).<sup>159</sup> Often, a paper would alternate between extensively reprinting the alienists’ testimony as though it offered insight and describing Crowe’s withering cross-examinations with great relish, sometimes in the same edition. A similar contradiction surrounded the supplemental analyses experts of varying qualification provided the papers. The papers would offer up the “expert’s” explanation for the crime and the public would consume it, but the multitude of stories in various papers, and the conflicting explanations offered by the same paper, created an atmosphere that made it clear no feature was actually going to offer a full resolution to the case.

The ambivalence towards the psychiatric testimony was clear at the sentencing hearing’s conclusion. On September 10, Judge Caverly pronounced sentences of life plus ninety-nine years in prison for each defendant. The life sentences were for the murder, the ninety-nine-year sentences for the kidnapping. The judge also specified that the psychiatric testimony had not swayed his opinion; he was sparing Leopold and Loeb’s lives solely on the basis of their youth.<sup>160</sup> He made it clear that he hoped both defendants would spend the rest of their lives behind bars, but also acknowledged that his sentence made parole a possibility.<sup>161</sup> Reaction to his

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<sup>159</sup> Fass, “Making,” 937-939; quote is from 937.

<sup>160</sup> Higdon, *Crime of the Century*, 264-267.

<sup>161</sup> Caverly’s stated position that he hoped Leopold and Loeb would never be granted parole was at odds with his actions. Caverly did not state whether he intended for the kidnapping and murder sentences to run consecutively or concurrently. In accordance with Illinois law, concurrent sentences kicked in automatically. If Caverly had specified consecutive sentences, he would have greatly restricted Leopold and Loeb’s chances for release. Leopold-Loeb historian Simon Baatz calls Caverly’s omission a mistake, but it is also possible that Caverly hoped to discretely leave open the possibility for parole even as he publicly spoke against it. Baatz, 414-415.

decision was primarily (though not unanimously) negative in papers all over the country.<sup>162</sup> In spite of Caverly's statements, writers inflamed the class resentments that surrounded the case with complaints that Leopold and Loeb's families had bought their children's way out of justice, and fueled outrage over the possibility that two young men could eventually be released from prison. The papers appear to have reflected popular opinion. Three decades later, sentiments against Leopold were still strong enough to make his parole a hotly contested issue.

The sentencing hearing had found the limits of the public's willingness to empathize or identify with the two young men as a part of classifying and understanding them. People could take comfort in psychiatry and psychology's efforts to explain the sources of Leopold and Loeb's crime, as they also could in the supplementary explanations the papers provided. But most people were not ready to accept those conclusions wholly, nor reduce the penalty they thought the crime demanded based on those explanations. Leopold and Loeb were, from this perspective, neither abnormally diseased enough to warrant special legal consideration nor typical enough of other youths of the time to warrant a continued panic after the sentencing hearing's conclusion. The hearing, combined with the public sphere discussions that surrounded it, put Leopold and Loeb at a convenient distance from a populace seeking to define normality in changing times: close enough to normal people to be understood in some respects but not others, yet different enough to be condemned.

For generations, efforts to understand Leopold and Loeb continued along much the same lines they had in 1924. The case maintained the power to define a

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<sup>162</sup> Baatz, 410-418.

distinct type of modern abnormality, which threatened the public at large. Efforts to understand that abnormality continued to depend on understanding the psychology of the murderers, drawing heavily from the way the alienists and the press had shaped the case in 1924. Even later writers who ignored or outright rejected psychological explanations for the crime still echoed basic dimensions of the case as the defense experts had described them and the press reported them. The case's narrative changed over time; elements gained or lost emphasis. Among other developments, sexuality, comparatively repressed in the 1924 discussions, came to dominate the case in the ensuing years, and after World War II fictional representations came to represent a new side of the case's discourse, more influential, perhaps, than nonfictional explorations. But the social and legal response to Robert Franks's murder in 1924 established the terms on which the future discourse would proceed, and shaped the nature of future debates over the case's characteristics in both fiction and nonfiction.

## CHAPTER TWO

### PRISON

“These young men should, and probably will, stay in jail for life. The governor who extended any clemency to them, even twenty years from now, would be inviting his own oblivion. The public forgets many things, but a murder like this is not one of them.”

– The Chicago *Herald and Examiner*, 1924<sup>1</sup>

### INTRODUCTION

The Leopold-Loeb case entered an important transitional period after the sentencing hearing concluded. Leopold and Loeb could easily have lost their ability to fascinate the public after they became prisoners 9306 D and 9305 D. They could have ceased to be sources for new news stories, and whatever power to fascinate they retained would increasingly have been confined to history and crime buffs. Instead, new developments occurred that both maintained the public interest in Leopold and Loeb’s contemporary activities and kept the 1924 case fresh in people’s minds, though not unchanged. The years 1924-1949 were a bridge in the case’s discourse. During that time, the case went from an ephemeral current event to an important part of American cultural life throughout the twentieth century and into the twenty-first.

In the quarter century after Robert Franks’s murder, the case acquired two traits that allowed it to grow beyond its roots in 1924. First, upon Richard Loeb’s death in 1936, the same-sex sexuality of the case became more explicit and took on an irrevocable power in defining the case. That power, however, was not static. The

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<sup>1</sup> Chicago *Herald and Examiner*, 11 Sep. 1924, qtd. in Hal Higdon, *Leopold and Loeb: The Crime of the Century* (Urbana, Ill.: U of Illinois P, 1975, 1999), 269.

second trait that allowed the case to endure in American culture was the establishment of its plasticity. The Leopold-Loeb narrative had been contested in 1924. There had always been competing notions of what the facts of the case were and what they meant. In the years after 1924, that subjective process continued, but the narrative was more easily revised for being situated in the past. The flexibility the case acquired facilitated its adaptation toward new cultural and social imperatives that gained emphasis after the 1920s, thus securing for it a continuing role in American life. By the 1950s, Leopold-Loeb was primed for application towards a new generation's crises over criminal justice, youth culture, juvenile delinquency, and sexuality.

The mobilization and adaptation of the Leopold-Loeb case toward contemporary problems in the 1930s and 40s was limited, at least in comparison to what it would become in the post-World War II era. In 1936, the case was characterized as typical of a specific kind of criminal monster: the sexual psychopath. The elements of youth, personality development, and modernity that had anchored the crime in 1924 fell by the wayside as Leopold and especially Loeb became deviate sex fiends whose crime required condemnation, not the in-depth examinations of 1924. Loeb's death at the hands of another inmate became, from this perspective, an extermination for which the public should be grateful, or at least not outraged. Leopold and Loeb's lives in prison, and Loeb's death there, also became a way to explore the operation of prisons in the United States and particularly in Illinois.

In either instance, whether the case was used to illuminate sexual psychology or penology, undercurrents of the case's 1924 discourse were resurrected and adapted

so as to maximize their applicability towards a new context. Leopold and Loeb's privileged lives at the time of the Franks murder echoed in the 1930s through allegations that Loeb exploited corruption and mismanagement in the prison system to enjoy undue comfort and luxury. The perceived sexuality of Leopold and Loeb's relationship, and perhaps of the Franks crime, became relevant for understanding how and why Loeb died. Later explorations of the case would go much farther, taking it from an exemplar of trends to a source for understanding them, but that was only made possible by these earlier developments.

The 1930s and 1940s also saw numerous practical developments in the case that had consequences for both the case's legacy and Nathan Leopold and Richard Loeb personally. While the latter died violently in prison, the former pursued an eventful career as a prisoner and became an active participant in the processes that shaped how people viewed him. Leopold managed to make his case become partly about the opportunities available for an inmate to live a constructive life behind bars and perhaps fully reform, connecting the case to more abstract questions about the theory and practice of prisons in the United States. In doing so, he travelled a path that, by 1949, was beginning to reveal a way out of prison.

That, however, was a long way off in 1924.

#### LEOPOLD AND LOEB IN THE PRESS, 1924-1936

Publicity died down fairly quickly after Leopold and Loeb's sentencing. The press eagerly covered the two convicts' arrival in prison and the lives that awaited them there, but the days of endless new material from and about the two young men came to an abrupt end. During the hearing, Leopold and Loeb had held court for



multiple reporters a day, and their comments combined with the events of the sentencing hearing to constantly replenish the pool of material.<sup>2</sup> In prison, routine defined Leopold and Loeb's lives, and they had far less contact with reporters than during the sentencing hearing. When their privileges were at their greatest, they were allowed a maximum of one outgoing letter per week, and a visitor every two weeks.<sup>3</sup> Even if they had had more practical opportunities to communicate, prison was a publicity-averse environment, and they risked alienating their jailers by talking to the press. They were made available to reporters upon their arrival, but otherwise, until the 1940s, wardens over the prison complex that housed them did not want much to do with the publicity they could attract.<sup>4</sup>

Leopold and Loeb also decided that further publicity could only hurt them. After their arrival, they refused to talk to the reporters who tried to solicit comments.<sup>5</sup> In 1928, when allegations that they were receiving cushy treatment prompted the pair to give their first interview since they went to prison, both inmates complained that they did not want media attention while serving out their sentences. Loeb, rather counter to his attitude towards the press during the sentencing hearing, declared that his case was nothing special: "I can't see why Leopold and I should be singled out from among the other prisoners."<sup>6</sup> Thirty years later, Leopold complained that he had

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<sup>2</sup> Nathan Leopold, *Life Plus 99 Years* (Garden City, N.Y.: Doubleday, 1958), 86.

<sup>3</sup> John Bartlow Martin, "Nathan Leopold's Desperate Years: Murder on his Conscience," part I, *Saturday Evening Post* 227, no. 40 (2 Apr. 1955): 88.

<sup>4</sup> When reporters visited the prison on the first anniversary of Leopold and Loeb's arrival in 1925, neither young man offered a comment for the story; Loeb reportedly was afraid of getting into trouble. When, soon thereafter, word got out that Leopold was teaching high school classes to other inmates, the publicity the news attracted led a warden to reassign him to another work assignment. James Mulroy, "Leopold and Loeb Lose Old-Time Nerve," *Chicago Daily News*, 11 Sep. 1925; Martin, "Murder on his Conscience," part I, p. 90.

<sup>5</sup> Martin, "Murder on his Conscience," part I, p. 88; Leopold, *Life Plus 99 Years*, 86.

<sup>6</sup> "Leopold and Loeb Deny They are Pets," *Washington Post*, 1 Oct. 1928.

never wanted the publicity to which he was continuously subject, and that it had caused him and Loeb to receive harsher treatments than they otherwise would have.<sup>7</sup> Subsequent chapters will show that, when Leopold did begin cooperating with the press, in the 1940s and even more so the 1950s, it was only on his terms, when he could capitalize on the decades of anticipation that his silence had nurtured.

In the meantime, reporters had to make do with whatever they could to continue exploiting the case's potential to boost circulation. For several years after the murder, papers made note of important occasions that would let them rehash the case without needing fresh comments from its principles: birthdays, the anniversaries of their arrivals in prison, news about Leopold and Loeb's contemporary lives, and whatever events in the outside world could justify revisiting the Franks murder.<sup>8</sup> For the last category, murders and kidnappings committed after 1924 invited comparisons and prompted revisitations to the case, either because of their circumstances or claims, sometimes by the murderers themselves, that Leopold and Loeb had inspired the crime. Those crimes, and their relation to 1924, helped to establish Leopold-Loeb as a prototypical event, the comparative model for successors.<sup>9</sup> They also prevented Leopold and Loeb from fading into the past, keeping the two young men relevant and priming the public's interest in new developments in their lives.

Leopold and Loeb made it back to the front page in 1927, when they were defendants in a civil trial for the castration of Charles Ream. Leopold and Loeb were

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<sup>7</sup> Leopold, *Life Plus 99 Years*, 86.

<sup>8</sup> The *Chicago Daily Tribune* made regular note of Loeb's birthday, June 11, from at least 1926-1928, and the anniversary of his and Leopold's arrival in prison on September 11 from 1925 to at least 1933. A sampling of other stories just from that paper include: "Richard Loeb, Franks Killer, Called Insane," 7 June 1925; "Leopold Author of Bird Book While in Prison," 4 Sep. 1926; "Nathan Leopold Seriously Ill in Prison Hospital," 1 July 1934.

<sup>9</sup> Paula Fass, "Making and Remaking an Event: the Leopold and Loeb Case in American Culture," *Journal of American History* 80, no. 3 (Dec. 1993): 940.

accused of several unsolved crimes after their confession, and a number of people filed or threatened to file suit, but only Ream's case made it to trial. Ream had been on his way home early in the morning November 20<sup>th</sup>, 1923, when two men forced him into an automobile and drugged him. He awoke several hours later, mutilated. Six months later, while Leopold and Loeb were being led into the Criminal Court Building, Ream exclaimed that he recognized the two defendants as his assailants. Though Leopold and Loeb were technically paupers, he pressed forward with civil charges, probably in the hope of obtaining money from their families.

The circumstantial evidence must have been tempting in 1924, when every strange unsolved crime in Chicago seemed as though it could have been the work of Leopold and Loeb. The attack came hours after Leopold's nineteenth birthday and – as the Hulbert-Bowman report eventually revealed – less than a week after Leopold and Loeb formed their criminal compact. Furthermore, the use of drugs to subdue Ream seemed to echo their botched plan to ether Robert Franks.

However, by 1927 the fervor had died down and the papers were more ready to acknowledge the possibility that Ream had retroactively tailored his story to fit Leopold and Loeb into the roles of his assailants after the media frenzy surrounding Franks's murder began. Between his initial police report and his identification of Leopold and Loeb six months later, Ream changed the site of his abduction, moving it to an area nearer to where Robert Franks's body was found. Similarly, in his initial statement to police, Ream said he could not see one of the men who attacked him, and he described the other man, who he later identified as Leopold, as taller and more sturdily built than Leopold was. Moreover, a *Chicago Daily Tribune* reporter had

abetted Ream in staging the supposedly spontaneous identification of Leopold and Loeb outside of the Criminal Court building, a fact that even the *Daily Tribune* was ready to cover when the reporter admitted as much on the witness stand. The detective on Ream's case testified at the civil trial trial, on Leopold and Loeb's behalf.<sup>10</sup>

The trial proceedings, however, were somewhat secondary; the *Daily Tribune* gave almost no specifics on Ream's testimony, and one reporter from another paper noted that he seemed like a backbencher at the suit in which he was plaintiff.<sup>11</sup> The real story was that the civil trial gave reporters their best look at Leopold and Loeb since 1924. The two young men left their respective penitentiaries – they were being kept in separate institutions at this point – to be present at the proceedings and testify on their own behalf.<sup>12</sup> It was enough to put the suit on the front pages of Chicago papers for several days even if the proceedings produced little news. Testimony in the trial only took three days in total, and Leopold and Loeb's testimony did not go beyond categorical denials, but reporters could use the trial to remind readers that the two young men were still alive and in prison, living out their punishments for Robert Franks's murder.<sup>13</sup>

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<sup>10</sup> Higdon, 254-256. Genevieve Forbes Herrick, "Leopold Denies Mutilation of Taxicab Driver: Franks Slayers Take Trial As Holiday," *Chicago Tribune*, 6 Jan. 1927.

<sup>11</sup> Genevieve Forbes Herrick, "Loeb, Leopold Again Laugh in Court," *Chicago Daily Tribune*, 5 Jan. 1925.

"Tragedy of Ream Appalling to Fans," *Chicago Daily News*, 5 Jan. 1927.

<sup>12</sup> Leopold had also been in court in 1926, when he was called as a witness in the case of six recaptured escapees who killed a deputy warden. Leopold's appearance garnered some press attention, but his refusal to answer questions – citing "prison ethnics" – had given reporters less material to work with than in the Ream trial. "Leopold in Court as Murder Witness," *NYT*, 21 Nov. 1926; "Leopold Mum on Stand," *NYT*, 23 Nov. 1926.

<sup>13</sup> The Ream case was on the front page of the *Daily Tribune* from Jan. 5-7, 1927.

In spite of the paucity of evidence in the Ream case, the final vote was 8-4 in Ream's favor.<sup>14</sup> "I guess it was impossible that a jury could find for us, regardless of testimony," Leopold later complained.<sup>15</sup> Either eight jurors were more ready than the press to assume Leopold and Loeb's guilt, or guilt or innocence did not matter to those jurors as much as the notion of exacting some belated retribution for Robert Franks's murder. The outcome of Ream's trial prefaced a dynamic that would more obviously be in effect nine years later, when a jury voted to acquit James Day for the murder of Richard Loeb on the basis of self-defense. However, in the latter case the scale of public fascination was much bigger, and the legacy much more important for perceptions of Leopold and Loeb's criminality.

In 1927, the Ream affair ended quietly, as Ream might have hoped: with an out of court settlement from Leopold and Loeb's families.<sup>16</sup> Ream's case did not endure in people's perceptions of Leopold and Loeb the way Loeb's death would. The castration was a shocking crime, but information about it in connection with Leopold and Loeb had been available since early June 1924, and the brief civil trial in 1927 failed to offer anything new or damning. On a less quantifiable level, it would appear that another reason Loeb's death thrived in the public imaginations while Ream's assault did not was that the crime Ream alleged, and his failure to explicate the circumstances of it and connect them to the case, simply lacked the necessary qualities to meet the public's beliefs about Leopold and Loeb. The evidence for both Ream and James Day's stories was problematic, but the latter had the necessary elements to click with popular perceptions while the former did not. In other words,

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<sup>14</sup> "Jury Discharged in Case Against Leopold," *Chicago Daily Tribune*, 8 June 1927.

<sup>15</sup> Leopold, *Life Plus 99 Years*, 125.

<sup>16</sup> Higdon, *Crime of the Century*, 286-287.

the public was developing a set of assumptions about Leopold that shaped how they perceived new information about the two young men. Whatever the reasons, Leopold and Loeb returned to the seclusion of prison after the jury hung, and the press attention died down quickly.

### LEOPOLD AND LOEB “IN STIR”

Leopold and Loeb both served time in two prisons that were administered jointly. Soon after Caverly issued their sentences, they were both transported to the Illinois State Penitentiary, Joliet Branch, about 30 miles southwest of Chicago. People who were in Joliet in 1924 described it as a “hellhole.”<sup>17</sup> Prison commissions had been declaring it unfit for human habitation since near the turn of the century, and would still be doing so more than a decade after Leopold and Loeb arrived.<sup>18</sup> Opened in 1858, by 1924 the prison had two main cell houses containing about 900 inmates each, making it approximately 100 percent overcrowded.<sup>19</sup> The cells were small and lacked adequate light, ventilation, or running water; inmates got a jug of water each day for washing and drinking, and a bucket for use as a toilet.<sup>20</sup> Bedbugs were a problem, there was no commissary, and possessing factory-made cigarettes was a punishable offense.<sup>21</sup>

In 1925, a new facility, Stateville Penitentiary, opened about five miles away. Stateville was supposed to replace Joliet, but the “old prison,” as it became known,

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<sup>17</sup> Martin, “Murder on His Conscience, part I, p. 88.

<sup>18</sup> Illinois Prison Inquiry Commission. *The Prison System in Illinois: A Report to the Governor of Illinois*. Springfield, Ill: 1937, 227.

<sup>19</sup> Martin, “Murder on His Conscience, part I, p. 88. On overcrowding: Prison Inquiry Commission, 233.

<sup>20</sup> Prison Inquiry Commission, 228-230; Martin, “Murder on His Conscience,” part I, p. 88.

<sup>21</sup> Leopold, *Life Plus 99 Years*, 106. Martin, “Murder on his Conscience,” part I, p. 88. James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: U of Chicago P, 1977), 22.

remained open, with both prisons operating under a joint wardenship throughout Leopold and Loeb's sentences.<sup>22</sup> Because of their connection, people sometimes referred to the two facilities as "the twin prisons," but in truth the institutions were very different from one another. Stateville was a much bigger institution with better facilities. Modeled on the panopticon system pioneered by Jeremy Bentham, it was designed to represent the state-of-the-art in large-scale incarceration.<sup>23</sup> Joliet soon became the junior institution, while Stateville went on to acquire a national reputation that endured throughout the rest of the twentieth century.<sup>24</sup> Prison historian and sociologist James Jacobs calls Stateville "one of the country's best-known penal institutions; like Attica, San Quentin, and Jackson, it is one of perhaps a dozen American prison megaprisons that informs the public's image of imprisonment."<sup>25</sup>

Leopold transferred from Joliet to Stateville in 1925. He secured permission to stay at the more comfortable facility after he was transferred to its hospital for appendicitis treatment. Whatever the immediate cause of his transfer, it was in keeping with an apparent policy of keeping him and Loeb apart. During their shared time at the old prison, they had worked in different cellblocks and been assigned different jobs. They saw each other a few times on religious holidays – Joliet did not then offer weekly services for Jewish inmates – but otherwise did not have much direct contact before Leopold left for Stateville. In late 1930, when Leopold was transferred back to the old prison, ostensibly for a disciplinary infraction, Loeb

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<sup>22</sup> A deputy warden handled day-to-day operations at the old prison while Ragen did the same at Stateville. Ragen visited the old prison two to three times per week. Prison Inquiry Commission, 237-238.

<sup>23</sup> Jacobs, 16.

<sup>24</sup> In 1936. Stateville had about 3,400 inmates to Joliet's 1700. In 1951, Stateville, had about 3,200 hundred convicts to Joliet's 1,000. Prison Inquiry Commission, 159, 244; John Bartlow Martin, "America's Toughest Prison," part I, *Saturday Evening Post* 224, no. 16 (Oct. 20, 1951): 19.

<sup>25</sup> Jacobs, 2.

received orders to relocate to Stateville. (Leopold was so despondent about returning to Joliet that he considered suicide.) But in 1931, perhaps because of the relative lack of continuing press attention to the case, Leopold was permitted to return to Stateville and Loeb was permitted to stay. The two remained at Stateville for the rest of their sentences – in Loeb’s case, for the rest of his life – and began living on the same cellblock in 1932. In prison as well as out, Loeb was Leopold’s closest friend.<sup>26</sup>

At Stateville, both Leopold and Loeb thrived as much as one could while serving life plus ninety-nine years, and amassed exemplary records as inmates. In 1936, there were only six non-inmate administrative staff at Stateville, which meant educated prisoners who could fill clerical positions were in high demand.<sup>27</sup> For Leopold, that demand eventually led to contact with some of the most prominent sociologists in the country, and in the 1940s to an avenue out of prison. Back in the 1920s and 1930s, it simply allowed him and Loeb a wider variety of work assignments and the chance to perform extra duties.

Both worked in prison manufacturing early in their sentences, but moved on to jobs that required administrative skill. Loeb worked for a time in the deputy warden’s office at Joliet, and Leopold, in addition to a brief foray into teaching at the prison school, worked in the prison library at Stateville, which came with access to special perks, such as a shower. He lost the job during his transfer back to the old prison, but when he returned to Stateville he was put in charge of rebuilding

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<sup>26</sup> Leopold, *Life Plus 99 Years*, 110, 111, 185, 187, 243; Martin, “Murder on His Conscience,” part I, p. 90.

<sup>27</sup> Jacobs, 22.



Stateville's library after it was destroyed in a riot.<sup>28</sup> He ran it thereafter under the nominal supervision of a prison official, relying on his family's money to supplement the prison's allocations.<sup>29</sup> Within five years, he had overhauled the facilities and had eight assistants assigned to him. A state prison commission singled him out for praise.<sup>30</sup> Leopold and Loeb also collaborated after their reunion at Stateville. At the prison administration's request, they co-authored a forty-page booklet for all new parolees explaining the rules governing their release.<sup>31</sup>

Leopold and Loeb's greatest joint accomplishment was probably the Stateville Correspondence School, which they opened on January 1, 1933 to fill a gap in the prison's educational system. The prison already had an in-house school, but it did not go past the eighth grade, and convicts had to choose between attendance and work. Inmates who chose work could take correspondence classes in their off hours, including at the high school level, but those programs were of varying quality and charged fees. Loeb proposed to Leopold that they launch a program for inmates that would provide a free high school education prisoners could pursue in their cells after their day jobs. Together, Leopold and Loeb developed the curriculum, handled the lessons and grading, and managed the school. Loeb even wrote his own textbook, a

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<sup>28</sup> Martin, part I, 88, 90; John Bartlow Martin, "Murder on His Conscience," part II, *Saturday Evening Post* 227, no. 41 (9 Apr. 1955): 68, 71; Leopold, *Life Plus 99 Years*, 111, 169.

<sup>29</sup> Leopold was working under the nominal supervision of Stateville's superintendent of education, John Bailey. Leopold claimed that Bailey was a figurehead needed to sign official documents, and that he, Leopold, had almost exclusive run of the library. There is probably some self-aggrandizement in that assertion, but the report of the independent Prison Inquiry Commission does indicate that Leopold ran the library on a day-to-day basis. Leopold, *Life Plus 99 Years*, 216-220; Prison Inquiry Commission, 200.

<sup>30</sup> Prison Inquiry Commission, 200.

<sup>31</sup> Leopold claimed that the pamphlet project began in 1933. His attorney, Elmer Gertz, attributed the pamphlet's publication to 1934. Leopold, *Life Plus 99 Years*, 237; Elmer Gertz, *A Handful of Clients* (Chicago: Follett, 1965), 87-88.

grammar primer for adults, which ran over 200 pages and was mimeographed for students.<sup>32</sup>

The school was a big success. Within a few months, it had 70-80 students in more than a dozen courses and its own office, and Leopold and Loeb had several assistants. By 1936, enrollment exceeded 200 students.<sup>33</sup> Eventually, the school offered junior college level work, and for a time branched out to include other prisons and other states. It became successful enough to continue beyond its founders. In 1945, nine years after Loeb's death and four years after Leopold stopped working on the school's administration, enrollment had grown to include 450 students. When Illinois implemented a comprehensive prison education system in the 1950s, the Stateville Correspondence School became a part of the state-sponsored system.<sup>34</sup> By 1962, the correspondence school's enrollment exceeded that of the other three schools at Stateville combined.<sup>35</sup>

For all the school's successes, however, it was Richard Loeb's death in 1936 that aroused serious public interest in Leopold and Loeb's activities in prison. Like the Charles Ream civil suit, the school simply did not have the right mixture of elements to bring back the case in a way that was new and exiting, but which still tapped into and built upon the things that had made the case a *cause célèbre* in the

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<sup>32</sup> Leopold, *Life Plus 99 Years*, 230-231.

<sup>33</sup> In 1936, a Prison Inquiry Commission report commented that inmates should not have been teachers, and found the enrollment "startlingly low" considering how large the pool of potential students was, but complimented the quality of education provided. Prison Inquiry Commission, 276.

<sup>34</sup> Leopold continued to grade assignments for the school until the early 1950s, but ceased to assist in administering the institution in 1941. During World War II, the school cut itself back to only teaching students from the twin prisons. John Bartlow Martin, "Murder on His Conscience," part III, *Saturday Evening Post* 227, no. 42 (16 Apr. 1955): 36-37. Leopold, *Life Plus 99 Years*, 283. Von Pittman, "Correspondence Study and the 'Crime of the Century': Helen Williams, Nathan Leopold, and the Stateville Correspondence School," *Vitae Scholasticae* 26, no. 2 (1 September 2009), 6, 21.

<sup>35</sup> Joseph Ragen and Charles Finston, *Inside the World's Toughest Prison: How a Prison Housing Thousands of Tough Convicts is Kept Literally Free from Riots and Escapes* (Springfield, Ill.: CC Thomas, 1962), 194.

first place. Loeb's death, in contrast, was shocking. It prompted the creation of a new event's narrative while also facilitating discussion of the 1924 case in a novel, salaciously sensational way.

#### THE DEATH OF RICHARD LOEB AND ITS AFTERMATH, 1936

On January 28, 1936, a little after noon, Richard Loeb staggered out of the private shower in the correspondence school's office, bleeding profusely from more than fifty wounds inflicted with a straight razor. Prison doctors made their best efforts to save him, and the Loeb family physicians came out from Chicago, but he died about three hours later. He was thirty years old. Leopold tended to the body.<sup>36</sup>

A twenty-three-year-old convict named James Day freely admitted to killing Loeb. Day claimed that Loeb had produced the razor in the shower and attempted to sexually assault him, the two men fought, and Day emerged triumphant. Day's story had inconsistencies. He described a prolonged struggle in which he wrested the weapon from Loeb, a bigger man than he, yet Day did not suffer a single significant razor wound while Loeb suffered scores of cuts. Moreover, Loeb's wounds included a cut throat, which Day would have inflicted from behind, an act inconsistent with self-defense. Still, few people in 1936 challenged Day's account. In May 1936, a Will County jury found Day not guilty by reason of self-defense after deliberating for less than an hour. Two years after the trial, strong evidence emerged that Loeb's death was a premeditated murder.<sup>37</sup>

Scholars who have studied the events of 1936 agree that it constituted a turning point for sexuality in representations of the Leopold-Loeb case, but they disagree on

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<sup>36</sup> Higdon, *Crime of the Century*, 294-295.

<sup>37</sup> Higdon, *Crime of the Century*, 291-303.

the precise nature of the change. Paula Fass, who argues that sexual discussions of the case were subdued in 1924 to facilitate a focus on the case as about childhood and youth gone wrong, writes that the pent-up desire to discuss the sexuality of the case “erupted” with Loeb’s death.<sup>38</sup> According to David Churchill, sexuality had always been prominent, if sometimes coded, in discussions of Leopold-Loeb, but the discussions of 1936 were more blunt and condemnatory, with less diversity of perspective.<sup>39</sup>

Whether sexuality emerged or reemerged in 1936, it still brought out into the open a new way of discussing Leopold and Loeb, as murderers and as perverts. Day’s story that Loeb had attempted to assault him, soon joined by a swarm of rumors about Loeb’s activities in prison, collided with memories of 1924 and the lingering but largely unspecified beliefs that perversion was a factor in Robert Franks’s murder. Together, they shaped how people understood the events of 1924 and prompted revisions to the narrative of those events. Those revisions brought sexuality a new prominence as an explicit, causative element of Franks’s murder that continued in varying forms throughout the remainder of the twentieth century. They also marked the beginning of a new mutability in the “facts” of the case as a historic event, which gave the case the flexibility to adapt to the concerns of subsequent generations. Eventually, sexuality would take on a complex, nuanced, and contested position in the Leopold-Loeb narrative. But before that happened, sexuality took center stage in a relatively straightforward manner, with the idea that Loeb’s sexuality was all the explanation necessary to understand his life and his death.

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<sup>38</sup> Fass, “Making and Remaking,” 941.

<sup>39</sup> David Churchill, “Queer Histories of a Crime, Representations and Narratives of Leopold and Loeb,” *Journal of the History of Sexuality* 18, no. 2 (May 2009): 306.

As official and journalistic investigations into Loeb, Day, and Stateville proceeded, stories about Loeb flooded newspapers as confirmation that Stateville was a hotbed of same-sex sexual activity and corruption. Papers published allegations from Day, other inmates, third parties, or unattributed rumors that Loeb used money from his family to bribe guards and buy goods and services for himself and other inmates. He could supposedly arrange work assignments, or even paroles, for men who he favored, and used this power to solicit sex from inmates like Day. Loeb could use his power for sexual coercion as well as bribery. Men who refused him could wind up with transfers to undesirable work details.<sup>40</sup> To contextualize these stories, papers reminded readers of scandals surrounding inmate rule, administrative incompetence or corruption, and escapes that had previously unfolded at Stateville.<sup>41</sup>

Even those charges for which there was little credible evidence intersected heavily with popular beliefs about life in Stateville, life in prison, and Leopold and Loeb. There were, first of all, many rumors in the prison about Leopold and Loeb's sex lives. Henry Hill, who was warden of Stateville for a time, once grew so annoyed with gossip among the guards that he raised the issue at a staff meeting.<sup>42</sup> In 1936, after Loeb's death, another inmate told a researcher that both Leopold and Loeb were active homosexuals, and that Loeb targeted young inmates, though the prisoner doubted Day's story.<sup>43</sup> Similarly, suspicions that Leopold and Loeb received favorable treatment from the administration went back to the twenties, and were once the subject of a nationally publicized dispute between men who at the time were the

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<sup>40</sup> Baatz, 430.

<sup>41</sup> Gladys Erickson, *Warden Ragen of Joliet* (New York: E.P. Dutton, 1957), 82-83.

<sup>42</sup> Henry Hill to Foreman Lebold, 15 December 1947, Nathan F. Leopold Collection at the Chicago History Museum (NFL at CHM), box 2, folder 4.

<sup>43</sup> Victor Neilson, interviewed by Ernest Burgess, qtd. in Churchill, 310.

warden of the twin prisons and the Chairman of the Illinois Parole Board, respectively.<sup>44</sup> Loeb also had money, which until shortly before the murder he used to buy presents for other inmates. Joseph Ragen, the warden of Stateville when Loeb died, disbelieved Day's story and adamantly denied that Loeb was homosexual. But even he acknowledged that Day, a cellmate of Loeb's, had benefitted from Loeb's largess in the form of cigarettes and food. (Similarly, prison employees and inmates alike charged that at least into the 1940s, Leopold used the power he gained from his work assignments to solicit sex from inmates.<sup>45</sup>) Loeb might have used his money to bribe guards as well; corruption was a recurrent problem at Stateville.<sup>46</sup>

There is little to indicate that Loeb ever attempted force or violence, against Day or anyone else, and Day probably took the razor into the shower the day he killed Loeb.<sup>47</sup> Even some of the major newspapers accounts that hinted Loeb had gotten what he deserved still had Day taking the razor into the shower.<sup>48</sup> Nor is it even certain that sex played any part in Loeb's conflict with Day. Ragen's theory of the crime, which in a sense validated his reforms, was that Day had killed Loeb because the latter would no longer buy food and cigarettes for him after Ragen introduced new rules specifically designed to limit individual inmates' financial power. Ragen claimed he had to remove Day from the cell he shared with Loeb about three weeks

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<sup>44</sup> Elmer Green was warden of the twin prisons, Hinton Claubagh the chairman of the parole board: "Warden Green Answers Attack of Parole Head," *Chicago Daily Tribune*, 28 Sep. 1928; "Leopold and Loeb Deny They are Pets," *Washington Post*, 1 Oct. 1928.

<sup>45</sup> Higdon, *Crime of the Century*, 308-309.

<sup>46</sup> Jacobs, 49.

<sup>47</sup> One inmate, quite possibly lying to shore up Day's story, testified at Day's trial that Loeb had once threatened him, the inmate, with a razor. Even in that convict's story, however, Loeb backed off of the threat of violence when his bluff was called. That inmate, and several others, claimed to have seen Loeb with the razor prior to the day of the murder, but Warden Ragen claimed that one of those convicts, George Bliss, had in fact provided James Day with the razor. Seymour Korman, "Two Convicts Tell Favors to Loeb in Prison," *Chicago Daily Tribune*, 3 June 1936. Erickson, *Warden Ragen*, 86.

<sup>48</sup> "Loeb Knifed to Death by Fellow Prisoner," *Washington Post*, 29 Jan. 1936.

before the murder because of arguments along those lines, and that Day and Loeb had several run-ins thereafter.<sup>49</sup>

Focusing on specific allegations, however, misses the overall effect of the various assertions about Loeb's life in prison. The aggregate implication of the press coverage was that, even if any one specific charge was wholly or partially untrue, there was probably something truthful within the whole of the allegations. In particular, publications could treat the accuracy of Day's claims of physical self-defense separately from the charges that Loeb enjoyed special privileges in prison, leaving open the possibility that the latter was true even if the former was not. *Time* magazine, like most news media, was careful to make clear that it was only repeating Day's narrative of events in the shower, but still declared that in the wake of Day's accusations "even non-partisan citizens wondered if it were customary at Stateville to pamper wealthy prisoners, place perverts in positions of authority."<sup>50</sup> And, by connecting allegations about Loeb to earlier scandals at the prison surrounding corruption and convict rule, newspapers lent those allegations credibility by positioning Loeb's supposed activities within an established pattern.

The rumors about Loeb's sexual activities in prison helped to heighten the perception that, whatever the evidentiary merits of Day's story, Loeb's sexuality explained his death, and perhaps justified it. By 1936, allegations of homosexuality carried, if anything, a more powerful stigma than they had in 1924, in part because many people more strongly associated men who engaged in consensual same-sex sexual acts with men who performed acts of violent predation against children. By the

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<sup>49</sup> Erickson, *Warden Ragen*, 80.

<sup>50</sup>"Last of Loeb," *Time* 27, no. 6 (10 Feb. 1936), 15.

mid-1930s, prohibition and the climate of flouting social conventions it had created had come to an end, and the “pansy craze” of the twenties and early thirties had come to an end, replacing the temporary popular fascination with same-sex sexuality with renewed suppressions of it and the affirmation of a heteronormative gender order.<sup>51</sup> Not coincidentally, the nation was at the same time becoming increasingly aware of a new perceived criminal threat: the sexual psychopath. Forensic psychiatry’s authority to explain criminal behavior had come a long way since the defense alienists’ testimony in 1924, as had the social scientific study of sexuality, both of which facilitated the construction of a distinct type of abnormal personality who was sexually motivated, violent, and male. Disruption of gender and sexual norms during the Great Depression heightened concerns about male sexual deviance, making this type seem all the more sinister and threatening.<sup>52</sup>

Within this sexualized context, the specifics of what happened on January 28<sup>th</sup> had to vie for attention alongside more general stories of Loeb’s sexual activities and power in prison in public sphere efforts to understand how and why Loeb died. A notorious child murderer like Loeb was readily adaptable towards the new type of criminal predator. His crime had been connected to sexuality in ways unspecified enough to have flexibility, but firm enough for people to remember them and presume them to be a part of the crime. Thus, by the end of 1936, as Leopold-Loeb historian David Churchill argues, “the more fluid sexual profile from 1924 of Loeb as a rebellious, confused, and out-of-control heterosexual youth had been replaced by that

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<sup>51</sup> Chad Heap, *Slumming: Sexual and Racial Encounters in American Nightlife: 1885-1940* (Chicago: U of Chicago P, 2009), 274. George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 331-354.

<sup>52</sup> Estelle B. Freedman, “Uncontrolled Desires: The Response to the Sexual Psychopath, 1920-1960,” *Journal of American History* 71, no.1 (June 1987).



of a more menacing figure, a sexual deviant on the prowl who was able to buy his way into positions of power.”<sup>53</sup> The transition was not unequivocal. To a great extent “Day’s version of the murder was effective because it was able to draw on preexisting images of Loeb, images that had been carried over from the 1920s,” but Day’s version also helped to reshape perceptions of the events that had transpired in 1924.<sup>54</sup>

The process of sexualizing Loeb’s death and the Franks murder in national media relied on a feedback loop. Day’s story was proof that Loeb was a pervert and indicated that the Franks murder had been an act of perversion, while the perception that Loeb was a pervert reinforced Day’s charges about Loeb’s sexual harassment and/or the attempted assault. The 1924 case was thus revised to reinforce the connection between homosexuality and violent predation. People accepted Day’s story, at least in its assertions that Loeb was homosexual, and began to speak of Robert Franks as the victim of a sexual homicide, implying that Loeb’s attraction to other men translated into a violent lust towards children. *Time*’s story on Loeb’s death, for example, connected the concept of “perversion” with violent predation in its discussion of Franks’s murder: “On May 21, 1924, two perverted Chicago youths named Nathan Leopold and Richard Loeb kidnapped 14-year-old Bobby Franks, knocked him unconscious, violated him, killed him, poured acid over his face, buried his body in a culvert on a forest reserve.”<sup>55</sup> The mixture of many established details from 1924, such as the culvert and the acid, probably lent credibility to the less-evidenced assumption that Franks had been violated.

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<sup>53</sup> Churchill, 313.

<sup>54</sup> Churchill, 311.

<sup>55</sup> “Last of Loeb,” 15.

Whether Loeb assaulted Franks, whether he had attempted to assault Day, or whether he was simply a pervert, the clear implication in many narratives of Loeb's sexuality in 1936 was that he represented a lower sort of person whose perversions had gotten him what he deserved in the shower at Stateville. Edwin Lahey, a journalist for the *Tribune*, went so far as to privately call Day's lack of injury in the supposed razor fight with Loeb a "miracle performed for the special [benefit] of a mosaic angel of retribution."<sup>56</sup> Lahey was also the author of the supposed lead paragraph for the *Chicago Daily News*'s first edition on Loeb's death, which became famous among newspapermen: "Richard Loeb, a brilliant college student and master of the English language, today ended a sentence with a proposition." If the lead truly existed, the edition that carried it has since been lost. But even if it never ran, the fact that it became such a source of humor indicates a disturbingly flippant perspective to the brutal razor-slashing death of a man in the state's custody.<sup>57</sup> But then, Loeb had always been a special case.

In such an atmosphere, the important issue for some people might not have been whether they believed Day's story about what happened in the showers, but whether they cared if it was true. Joseph Schwab, who at twenty-six had been the youngest juror at Day's trial, told a researcher in the 1970s that his not guilty vote had little to do with the merits of Day's story. He voted to acquit not because he believed that Loeb had attempted to assault Day, nor that the Franks murder was a sexual

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<sup>56</sup> Edwin Lahey to Alexander Woollcott, 6 Feb. 1936, Rare Books and Special Collections Department, Hamilton University, p. 6.

<sup>57</sup> Qtd. in Higdon, *Crime of the Century*, 297-298. John Farrell, "Leopold and Loeb: The Curious Case of the Greatest Newspaper Lead Never Written," 1 Dec. 2009, *US News & World Report* Website, <http://www.usnews.com/opinion/blogs/john-farrell/2009/12/01/leopold-loeb-and-the-curious-case-of-the-greatest-newspaper-lead-never-written>, accessed 30 July 2012.

crime, but because of the more sweeping presumption that same-sex sexuality was in itself enough to warrant vigilantism. Recalling the characteristic mid-1930s hostility towards non-heterosexual sexualities, Schwab explained “nobody liked a queer, a homo, or a lesbian...so it was a good thing to get rid of such people. They were Skum [sic].” All but one fellow juror, he claimed, had voted on similar logic to acquit Day on the first ballot. The eleven jurors quickly browbeat the holdout into changing his vote.<sup>58</sup>

The different interpretations of Loeb’s death – self-defense, justice delayed, or the purging of a sexual pervert society was better off without – were not mutually exclusive; they could overlap and intersect in a variety of ways. One could believe, for example, that Day’s story of a physical assault was false, but that he had justifiably killed Loeb in order to stop the latter’s sexual extortion. But all of them operated under the presumption that perversion lay at the core of understanding Loeb. They therefore indicated that Loeb’s sexuality – which according to this presumption definitely included an attraction to men and might well have included a lust for Robert Franks, a young boy – was the key to understanding the Franks murder. Those interpretations thus made the case into anecdotal evidence of a causative link between same-sex sexuality and child assault and murder.

#### LOEB’S DEATH IN HISTORICAL MEMORY

The strength with which the papers and the public embraced Day’s story in 1936 allowed it to survive multiple credible challenges to the story’s basic precepts. Many newspapers in the 1950s presumed that Loeb had died while propositioning or

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<sup>58</sup> Qtd. in Higdon, *Crime of the Century*, 300.

assaulting a fellow inmate. Some were explicit about Loeb's "perversion" leading to an altercation in the shower,<sup>59</sup> while a great many more referred to him dying in a "prison fight," or some variation on the term, which validated Day's story by describing a struggle instead of an execution.<sup>60</sup> Even after Ragen publicized his discovery of evidence that Day had taken the razor to the shower the day he killed Loeb in 1957, only a minority called Loeb's death a "murder."<sup>61</sup>

The perception that Loeb had, one way or another, brought about his own death continued to have traction with the public into at least the 1960s, and showed how far removed from factual scrutiny narratives of Leopold-Loeb had become. In 1965, Chicago *American* reporter George Murray produced a particularly stark example of the flexibility that came to surround nonfiction narratives of Loeb's death, and indeed the Leopold-Loeb case in general, in his memoir *Madhouse on Madison Street*. Murray recalled that Loeb was killed by "a handsome Negro whose huge bronze body evoked Dickie Loeb's erotic dreams for weeks." When Loeb's lust so overwhelmed him that he attempted an ill-fated assault, "Dickie threw himself on his knees before the naked black body and clutched his captive around the legs, determined to satisfy his lust. All he got for his shower of kisses was a shiv between

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<sup>59</sup> Dorothy Thompson, "Leopold Doesn't Deserve Parole," Gary, Ind. *Post-Tribune*, 6 Aug. 1957; *Paradox of Parole*, Mt. Vernon [Ohio] *News*, 3 Aug. 1957.

<sup>60</sup> "A Thrill-Killer's Appeal," *Springfield [Ohio] Sun*, 3 Aug. 1957; "Time Healing Wound," *Wilkes-Barre Record*, 31 July 1957; "Leopold Presents his Case," Laporte, Indiana *Herald-Argus*, 19 July 1957; "Parole for Nathan Leopold," *St. Louis Post-Dispatch*, 17 July 1957.

<sup>61</sup> Ragen claimed to have made the discovery in 1938, and publicized it in Erickson's *Warden Ragen*, p. 86, in April 1957. "Guilty with Mercy," *Salem [Ohio] News*, 7 Aug. 1957, "Most Oldsters Approve Governor's Rejection of Leopold clemency Plea," *Knoxville Tennessee Journal*, 2 Aug. 1957. "Stays Where he Belongs," *Pittsburgh Headlight*, 7 Aug. 1957. On *Warden Ragen's* release: "Books Published Today," *New York Times*, 19 Apr. 1957. In 1965, when Day faced sentencing for an unrelated crime, the Chicago *Sun-Times* did repeat the assertion from *Warden Ragen* that Day had killed Loeb over the latter ceasing to buy goods for the former, indicating that Ragen's assertions might have gained traction with time; "Killer of Loeb Sentencing for Threatening 4," Chicago *Sun-Times*, 27 Apr. 1965.

the shoulders, wielded by the powerful arm of the black man who was revolted by the very touch of Loeb's slaverling lips."<sup>62</sup> Murray did not explain how he presumed to know Loeb's "erotic dreams," but the homoeroticism with which he described the interracial encounter between Loeb and the black man with the "huge bronze body" is even more perplexing; James Day was, in fact, a slightly built white man.<sup>63</sup>

Murray's account is informative not because it is accurate, but because accuracy did not concern him. In writing about Leopold and Loeb, a journalist with one of the major Chicago papers felt no evident pressure to look into how he characterized Loeb's death, or for that matter the 1924 sentencing hearing. When a historian pointed out to Murray the errors in his account, Murray blithely admitted "that error of mine as to the fairy who knifed Dickie Loeb to death is nobody's fault but my own." He did not fact-check his recollections of the event before publication, though he claimed to check his other stories, and at any rate considered himself part of a journalistic tradition of reprinting rumors and altering sources' accounts in the pursuit of a heavily subjective truth.<sup>64</sup> Murray thought it was enough that he was giving the public the lurid, prurient, and almost entirely fabricated details it wanted with a story that was close enough to what it considered to be true. And he was not the only one.

James Day made a profitable enterprise out of changing his story. Day, who in the most favorable interpretation of events had been acting in self-defense when he

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<sup>62</sup> George Murray, *The Madhouse on Madison Street* (Chicago: Follett, 1965), 342, 343. Murray has Loeb's killer taking the weapon – in his account a shiv – to the showers on the day of the murder, so in that respect, ironically, his account was more accurate than some of its peers.

<sup>63</sup> In 1938, Day was 5'7" and weighed 145 pounds. Higdon, *Crime of the Century*, 300.

<sup>64</sup> George Murray to Hal Higdon, 31 Oct. 1974, Hal Higdon Research Papers on the Leopold and Loeb Case at the Chicago History Museum, box 3, folder 1.

sliced a man to ribbons, became a kind of celebrity. He later wrote of 1936: "I had been a nobody, another faceless convict doing a 10-year bit. But now, after I had killed one of America's most notorious murderers, I became a famous character."<sup>65</sup> For decades after the crime, he sold stories of himself as a force for righteousness against the base sexual and criminal evil that Loeb represented. He published three different first-person accounts of Loeb's death in pulp magazines, in 1936, 1942, and 1960. Although all three versions ended with Loeb attempting to sexually assault Day, they varied from one another significantly. Each of the later two versions altered the story so as to enhance its marketability, without apparent concern for how fantastic the stories had become. By the last story, in 1960, Loeb had a secret plan to escape to South America, where 1,000,000 dollars would be waiting for him. He attempted to rape Day over the latter's refusal to abet the scheme.<sup>66</sup> The stories were almost certainly ghostwritten, and they went out in a genre not known for its diligent fact checking, but they still bore Day's name, and the readiness he showed to change his own story should have eroded the credibility of his original version of events. Instead, their inconsistency went unnoted.

#### THE LEGACY OF LOEB'S DEATH FOR THE LEOPOLD-LOEB NARRATIVE

Interest in narratives of Loeb's death peaked in 1936, and they never reached the same level of enduring fascination that the case itself had. By the late 1950s,

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<sup>65</sup> James Day, "Why I Killed Richard Loeb," *True Detective* 73, no.1 (May 1960): 80.

<sup>66</sup> The 1942 version involved a similar escape plot, but in the earlier version Day did not know how Loeb was going to get to South America, nor did Day mention the million dollars. The 1960 version also introduced Roger Touhy into the narrative. Touhy was an extremely high-profile former inmate who had been murdered soon after his release in 1959. His addition to the story gave it added reader appeal while Touhy, being dead, could not contradict Day's version of events. James Day and Harry Spurier, "I Killed Dickie Loeb," *Master Detective* (November 1936). James Day and Barry Stephens, "Why I Killed Richard Loeb," *Detective Story* (September 1942). James Day, "Why I Killed Richard Loeb," *True Detective* 73, no. 1 (May 1960).

challenges to it were becoming more commonplace. But the flexibility in the narratives surrounding Loeb's murder marked the beginning of an important development in the Leopold-Loeb case. Many people considered the specifics of a given story about Loeb irrelevant long as the story itself was compatible with their preconceptions. In the 1940s and the 1950s, as fictionalizations of the case became a key forum in its discourse, a similar dynamic came into play. The case was somewhat adaptable, yet still looked upon as a "real" event with characteristics that could be known and applied towards understanding the world.

Popular perceptions and memories of events change over time, and there had always been generous room for speculation, sensationalism, and outright fabrication in renditions of the Leopold-Loeb case. Generally, however, discussions of the case had at least a pretense of being based in evidence. Beginning with Loeb's death, and the belief that what happened in the showers at Stateville had been anything but murder, it became almost explicit that what mattered was that a given story seemed appropriate, that it felt right rather than that it accorded with evidence or research. This mutability, combined with the case's continuing authority as a precedent-setting historic event, helped the case to be adapted in such a way that it could seem to be a forerunner for a wide array of social issues in subsequent years.

After 1936, sexuality's role in theories of the Franks murder became more complicated. Perceptions that Franks had been sexually violated continued, but they did not have the same dominance in defining the crime. After World War II, the psychological nuances of the 1920s resurged and merged with the new emphasis on sexuality that began in the 1930s, and the key sexuality of the case once again became

Leopold and Loeb's relationship with each other, not with Franks.<sup>67</sup> But the developments of the 1930s made that revaluation of their relationship possible and colored how it occurred. Most importantly, the discussions of the case in the 1930s cemented the idea that Leopold and Loeb's sexuality connected directly to their crime, and was not, as the defense alienists had maintained, an insignificant trait.

### PRISON REFORM IN ILLINOIS

Back in 1936, sexuality might have made Loeb's death seem like just desserts, but the death and the response thereto also provided potentially damning evidence against a prison system whose hold on the public's support was already very shaky. The rumors about corruption and homosexuality at Stateville, and the undeniable presence of violence, potentially represented the ultimate failure of a revolution in penology that dated back at least thirty years. Loeb's death therefore proved the first step towards the case's entwinement with prison reform. That connection eventually created key opportunities for Leopold to reform his public image and, like the sexual dimensions of the case, had important consequences for how people perceived the Franks murder in the 1950s.

Since the 1830s, prisons had operated on a philosophy of rehabilitation through discipline and retribution. The theory behind the approach, according to prison historian Blake McKelvey, was "that a man could be made penitent by giving him just a measure of punishment to balance against the gain he had received from his crime or the injury society had suffered."<sup>68</sup> Where colonial and early republican

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<sup>67</sup> Fass, "Making and Remaking," 942.

<sup>68</sup> Blake McKelvey, *American Prisons: A History of Good Intentions*, (Montclair, N.J.: Patterson Smith, 1977), 249.



thought equated crime with sin, reformers began to perceive it as environmental, the result of bad influences and upbringing. So, as well as to prevent violence and misbehavior, reformers emphasized isolation, discipline, and strict regimentation to force inmates to reflect on the error of their ways, free from the problematic influences of society and each other.<sup>69</sup> States constructed “substantial penitentiaries equipped to house convicts in separate cells and endeavored to prepare them for a return to the community by labor in strict silence or in complete solitude in their cells.”<sup>70</sup>

At the turn of the twentieth century, while a subjugationist, racially driven approach continued to develop and predominate in the South, Progressives brought about profound changes to the American criminal justice system throughout much of the rest of the country, including Illinois.<sup>71</sup> Innovations such as probation, juvenile courts, and reforms in policing sought to approach crime rationally, and to treat rather than punish criminals.<sup>72</sup> Prisons were no exception, as the retributive, disciplinary model came under fire from Progressives who thought it failed to properly understand the origins of crime, and that the best way to help inmates learn to function in society was to acclimatize them to it instead of isolating them from it.

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<sup>69</sup> David Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*, rev. ed. (New York: Aldine de Gruyter, 1980, 2002), 117-118.

<sup>70</sup> McKelvey, x.

<sup>71</sup> The American South also experienced important changes in the criminal justice system during the Progressive Era, including in prison administration, but remained overall on a different track from that of the north and west. In addition to its racial and subjugationist orientations, the southern system generally favored penal farms over penitentiaries for all but the most incorrigible escapees, wanting to maximize the labor potential of its inmates. Historian Robert Perkinson argues that the southern subjugationist approach wielded a greater influence throughout the twentieth century than most historians have appreciated, and in recent decades has demonstrated dominance. Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Metropolitan, 2010), 1-14; Larry Sullivan, *The Prison Reform Movement: Forlorn Hope* (Boston: Twayne, 1990), 48-49.

<sup>72</sup> Samuel Walker, *Popular Justice: A History of American Criminal Justice*, 2<sup>nd</sup> ed. (New York: Oxford, 1998), 112-144.

Reformers sought to make prisons themselves into replicas of society in which prisoners could learn to function on the outside.<sup>73</sup> In many prisons, inmates were encouraged to maintain correspondence and allowed to receive visitors to help keep them connected with the outside world. Elements of individuality and sociability were allowed to thrive in the day-to-day operations of many institutions: inmates were permitted to talk to one another to foster socialization; they could purchase minor items at commissaries to help maintain a sense of autonomy; they could participate in recreational amusements, such as sports; and they could exercise limited self-government through inmate committees.<sup>74</sup> In many prisons, including Stateville, harsh corporal punishments eventually gave way to less physically painful methods, such as isolation or the removal of privileges.<sup>75</sup>

Progressives also sought to bring rational organization and individually tailored solutions into prisons. Psychiatrists, as a part of their still expanding purview in American life, advocated for perceiving criminality as a psychological malady, and for modeling prisons on hospitals. They began to take up positions in prisons, theoretically to diagnose inmates and prescribe individualized therapeutic and educational tracts.<sup>76</sup> (Several of the defense alienists were involved in this movement. William Healy and Bernard Glueck worked at the Boston Juvenile Court system's research clinic and Sing Sing penitentiary, respectively, and in 1933 William White advocated in *Crime and Criminals* for the development of a wider range of

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<sup>73</sup> Rothman, 118.

<sup>74</sup> Rothman, 118-122.

<sup>75</sup> McKelvey, 291-292; Erickson, *Warden Ragen*, 128-129.

<sup>76</sup> Rothman, 122-123.

institutions to treat a broad range of problems.)<sup>77</sup> Other prisons practiced simpler classification schemes, in which prisoners were assessed according to their potential for rehabilitation and placed in minimum, medium, or maximum security facilities accordingly, but in either case the goal was to develop flexible, individually tailored solutions.<sup>78</sup>

The prison reform movement came under fire in the 1920s and 1930s. Progressive ideas about rehabilitation and community never wholly supplanted the idea that prisons should be punitive and that sentences should be fitting punishments for the crime rather than therapeutic regimens for the criminals.<sup>79</sup> As historian David Rothman argues, “one should think not of a Progressive prison, but of prisons with more or less progressive features.”<sup>80</sup> Prisons had borrowed Progressive reforms piecemeal, and Progressive ideas influenced rather than reshaped most prisons. Underfunding and overcrowding, moreover, weakened or negated the effectiveness of the reforms that prisons did adopt. The problem worsened in the 1930s, as most states’ penal standards slipped because of the Depression.<sup>81</sup> The introduction of new institutions, such as parole, probation, and indeterminate sentences, however, still indicated important changes in the perception of and response to prisoners in the United States, even if the reality was not the fundamental reconstruction of the criminal justice system for which progressives had hoped.

By the 1930s, the situation seemed dire enough that many reformers thought it was time to reassess penal practices. Outside of prisons, at least before the repeal of

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<sup>77</sup> McKelvey, 271-272; William A. White, *Crime and Criminals* (New York, 1933), 10.

<sup>78</sup> Rothman, 124.

<sup>79</sup> McKelvey, 267.

<sup>80</sup> Rothman, 128.

<sup>81</sup> McKelvey, 290-291, 307.

the Nineteenth Amendment in 1933, the widespread law breaking and violence associated with prohibition seemed to threaten law and order and undermine claims to the effectiveness of Progressive methods. The highly publicized exploits of “public enemies” like John Dillinger and Baby Face Nelson compounded the problem in the 1930s by raising apparent – but largely fabricated – fears of a “Crime Wave.”<sup>82</sup> Observers had little reason to hope that prisons in the 1930s would solve the problem. The freer movement of convicts within the prison in comparison to nineteenth century institutions combined with chronic overcrowding to hinder discipline. Violence among inmates, sexual activity, and perhaps most disturbingly, riots like the ones that hit the twin prisons in 1931 all contributed to the perception that penal practices needed reappraisal.<sup>83</sup>

Illinois was deeply embedded in these trends, in its implementation of Progressive criminal justice reform, in the discrepancy between theory and practice, and in the eventual backlash in the 1930s. It was the first state to create a juvenile court, and one of the first to adopt the indeterminate sentence.<sup>84</sup> The legislature implemented a “good time” merit system in 1872 to reward convicts who demonstrated the ability to reform.<sup>85</sup> The state established the office of the state criminologist, to diagnose and treat inmates, in 1917, and created a diagnostic depot at Joliet to assess and classify incoming inmates in 1933.<sup>86</sup> Stateville’s warden tried to

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<sup>82</sup> J. Edgar Hoover, among others, intentionally heightened the “public enemy” crisis to garner support for his own agenda to expand federal law enforcement powers. Walker, 157-159.

<sup>83</sup> McKelvey, 290-292.

<sup>84</sup> Jacobs, 15.

<sup>85</sup> Erickson, *Warden Ragen*, 98.

<sup>86</sup> Jacobs, 16; Erickson, *Warden Ragen*, 210-211.

implement a convict grievance committee in the early thirties, but the idea did not catch on.<sup>87</sup>

Most attempts at Progressive administration, however, were hamstrung from the start. Stateville itself was a product of reformist impulses tempered by reality. It was supposed to be a state-of-the-art institution that would alleviate overcrowding and provide better living conditions. But it was also an extremely large maximum-security penitentiary where several smaller facilities of varying security levels would have better fit most Progressive models.<sup>88</sup> Before Ragen's arrival, the wardens had not been able to maintain effective discipline for rehabilitation. After Ragen's arrival, administration focused more on punishment and security than preparing convicts for reentry to the community. Funding was insufficient for what programs there were to realize their full potential. In 1936, classes at Stateville's official school only went to the eighth grade and there was only one full time teacher. Prison instructors made up for the shortfall. (The report noted that Leopold and Loeb's correspondence school helped to offset this shortcoming, but still found enrollment low.) The two medical doctors who worked in the prison hospital were part time, and the hospital itself was undersupplied. There was no staff psychiatrist to oversee therapeutic treatments for the inmates. The psychiatrist who oversaw the classification of new inmates did double duty as best he could.<sup>89</sup>

Crony partisanship permeated much of the hiring. The wardenship and guard positions at the twin prisons were patronage jobs. At least two of Joseph Ragen's

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<sup>87</sup> Leopold, *Life Plus 99 Years*, 214.

<sup>88</sup> McKelvey, 282-283.

<sup>89</sup> Prison Inquiry Commission, 202-203, 276, 176-177, 188. Stateville's medical conditions were not atypical of prisons at the time; McKelvey, 294.

predecessors as warden had no experience running a prison when they took over the mammoth institution; they were county sheriffs who owed their jobs to political connections. (Ragen started out the same way, but established himself at Illinois's Menard penitentiary before taking over at Stateville.) One warden, Dwight Green, used to withhold political contributions from employees' pay.<sup>90</sup> Guards, by far the greatest number of employees at the prison, were similarly unprofessional. There was no regular course of instruction for them, and sometimes the only thing in their personnel files indicating their qualifications was the name of the politician who had recommended them.<sup>91</sup> The job paid little and entailed twelve hour shifts, sometimes extended to sixteen, six days a week with no overtime. Many guards lived on the prison grounds, in quarters that were subject to search without warrant.<sup>92</sup> Job performance did not count for much one way or another: there was almost no room for advancement, while staffing shortages made dismissal unlikely. The situation made corruption and incompetence virtually inevitable.<sup>93</sup>

Gangs had the run of the twin prisons when Ragen assumed the wardenship. Inmates faced severe deprivation, and currency circulated freely even though there was no commissary, so illegal rackets for contraband goods and services thrived. The prison yard was essentially a shanty market, with more than eighty separate tarpaper buildings providing a wide array of goods and services. Predatory enterprises such as extortion and theft thrived as well. Guards were unable or unwilling to address the

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<sup>90</sup> Jacobs, 19-20, 28-29.

<sup>91</sup> Prison Inquiry Commission, 155; Erickson, *Warden Ragen*, 51.

<sup>92</sup> Stateville, 21, 39-40; Erickson, *Warden Ragen*, 51.

<sup>93</sup> Prison Inquiry Commission, 154-155; Jacobs, 32.

problem, or profited from it.<sup>94</sup> When Ragen set out to break the underground economy by forcing inmates to turn their money over to a prison accounts office, he collected more than \$15,000 in cash.<sup>95</sup> While it was still in circulation, inmates could use the money to bribe guards to ignore infractions, provide favors, or procure luxuries, the last of which was easy to do because guards were not routinely searched upon entrance to the prison.<sup>96</sup> Inmates like Leopold and Loeb could purchase many favors, and much favor. Loeb was supposedly quite generous with his resources before Ragen's arrival.<sup>97</sup>

Ragen went into the twin prisons in 1935 with a clear drive to clean up their administration. His immediate goals were to improve staff performance, stiffen discipline policies, and break the power of the gangs. He curtailed the use of cash and limited the amounts of money inmates could spend through their accounts at the prison commissary. Eliminating hard money restricted the underground economy and inmates' ability to bribe guards, while capping the amount they could spend limited their ability to barter or give away purchases. Ragen also transferred out the gang leaders, tore down the tarpaper shacks in which their enterprises operated, and confiscated many weapons, though not the one that was soon to kill Richard Loeb.<sup>98</sup> For all Ragen's efforts, he had only been warden for four-and-a-half months when Loeb died. It was not, he felt, enough time for his policies to overcome entrenched problems, but it was certainly long enough to involve him in the ensuing scandal.<sup>99</sup>

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<sup>94</sup> Jacobs, 23, Erickson, *Warden Ragen*, 42-46.

<sup>95</sup> Erickson, *Warden Ragen*, 56-57.

<sup>96</sup> Prison Inquiry Commission, 240.

<sup>97</sup> Higdon, *Crime of the Century*, 292.

<sup>98</sup> Erickson, *Warden Ragen*, 52-57. Higdon, *Crime of the Century*, 292.

<sup>99</sup> Erickson, 81-82.

Papers reprinted allegations that Loeb bought special privileges inside the prison, raising the lingering specter of the gang rule that Ragen had made it his first priority to overcome.<sup>100</sup>

### THE ILLINOIS PRISON INQUIRY COMMISSION

Loeb's death proved the last straw in years of discontent with the state's prison administration. The stabbing-death of another inmate in a prison brawl a few months earlier had failed to arouse a public outcry, but Loeb's death, like Robert Franks's twelve years previous, had the necessary ingredients for massive press exposure and public uproar.<sup>101</sup> The idea that Loeb could buy privileges played on lingering class resentments towards him and the perception that he had bought his way out of justice in 1924.<sup>102</sup> Stories about Loeb using his power to satisfy sexual appetites had the added bonus of speaking to the public's long-unsatisfied interest in Loeb's sexuality by playing up his supposed escapades in prison. It did not help that the murder happened amidst a contentious gubernatorial primary, giving Governor Horner's opponents an effective issue with which to cudgel him. The *Daily Tribune*, which sided with Horner's opponents, circulated those opponents' criticisms and connected Day's allegations about Loeb's special status in prison with earlier scandals in Illinois surrounding corruption and inmates flouting prison regulations. (Horner survived the primary challenge and went on to win reelection.)

In an effort to quell criticisms, less than a week after Loeb's death Governor Horner initiated the formation of a Prison Inquiry Commission with the mandate to

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<sup>100</sup> Churchill, 308; Erickson, *Warden Ragen*, 81-83.

<sup>101</sup> Erickson, *Warden Ragen*, 59-60, 81-83.

<sup>102</sup> Churchill, 311-312, 309.



investigate conditions at all of the prisons in Illinois.<sup>103</sup> In his letter to prospective commission members, Horner made it clear that he wanted them to address the popular concerns about the management of the prison system and investigate thoroughly “that the public may know the truth about any and all charges against prison administration in our State.”<sup>104</sup> The ten-man commission worked on the report for more than a year, conducting extensive research that included interviews with prisoners, prison employees, and outside experts from across the country, as well as detailed on-site inspections of every major prison in Illinois.<sup>105</sup> Its final report, published over a year later, ran to nearly 700 pages and was very comprehensive. Although it was a state document, the Chicago Crime Commission sold copies to the public for two dollars, and the *Journal of Criminal Law and Criminology* published a review.<sup>106</sup>

The report profiled each prison individually and the Illinois prison system as a whole. In discussing the prisons specifically, the report combined detailed budgetary and statistical data with firsthand observations about the facilities and their operation. The descriptions were somewhat dry and focused more on physical detail than the intangible aspects of life in the prisons, but they were extremely thorough. In discussing the prison system as a whole, theory and scholarship found a place right alongside practical research. Multiple times, the report discussed the philosophical and social purposes of the prison system or some specific aspect of it and how best to

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<sup>103</sup> “Horner Calls Experts into Prison Inquiry,” *New York Times*, 4 Feb. 1936.

<sup>104</sup> Prison Inquiry Commission, 527.

<sup>105</sup> Prison Inquiry Commission, 7; Erickson, *Warden Ragen*, 83-84.

<sup>106</sup> Ferris Laune, review of *The Prison System in Illinois: A Report to the Governor of Illinois*, by the Illinois Prison Inquiry Commission, *Journal of Criminal Law and Criminology* 28, no. 3 (Sept.-Oct. 1937): 468-469.

achieve them. Ernest Burgess, a criminologist at the University of Chicago, wrote a special appendix for the book.<sup>107</sup>

The report's proposals for reforming the prison system reflected a resounding endorsement of progressive initiatives. The Inquiry Commission compounded the taint of Loeb's death with voluminous criticisms and recommendations, but did so by condemning the practice of Illinois penology while validating the theory behind programs intended to rehabilitate inmates. The commission called not just for prison policies along these lines, but an overhaul of the entire legal system towards them: "Punishment should not be standardized, it should be individualized. The law in Illinois says, in effect, that the punishment should fit the crime. This is archaic and absurd. The punishment should fit the criminal. This is modern, human, scientific." The report's practical prescriptions for the Illinois prison system were staples of the prison reform movement, calling for professionalized staffing, individualized treatments for inmates, better facilities, and more privileges.<sup>108</sup>

In spite of the negative publicity that surrounded Loeb's death, the report was in some ways an endorsement of Ragen's wardenship in that many of the reforms it called for were similar to those he had already sought to implement. Ragen could easily have become a scapegoat for the scandal; not only was he the Warden of Stateville when the scandal broke, but he also doubled as Superintendent of the state prison system. Instead, in the aftermath of Loeb's death and the report, he moved forward with plans to reform Stateville and the old prison at Joliet.<sup>109</sup>

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<sup>107</sup> Ernest W. Burgess, "Parole and The Indeterminate Sentence," in Prison Inquiry Commission, 601-624.

<sup>108</sup> Prison Inquiry Commission, 505.

<sup>109</sup> Erickson, *Warden Ragen*, 29, 85.

The state declined to embrace the philosophical reorientation of the Illinois prison system for which the report called, but it did provide funding for improvements, most dramatically at Joliet. Like every similar commission for the previous thirty years, the 1936 commission called for the complete shutdown of the decrepit facility, a move that Ragen supported. The old prison remained open, but Ragen spent the next twenty years overseeing renovations, including the installation of running water in the cells.<sup>110</sup> Joliet finally closed in 2002, nearly 100 years after it was first condemned.<sup>111</sup>

#### WARDEN RAGEN OF JOLIET

Except for an eighteen-month period of resignation from 1941-1942, Ragen served as warden of the twin prisons for twenty-five years, from 1935-1961. During that time, he became, to use the words of one prison historian, “one of the most powerful wardens in prison history.”<sup>112</sup> He secured for the twin prisons an economic and political independence that Stateville historian James Jacobs argues made “Ragen’s Stateville...an autonomous institution accountable neither to other public agencies nor to the public at large,” and secured for himself the staying power to work under six different governors.<sup>113</sup> His authority in his institution was nearly absolute. Larry Sullivan, a prison historian, argues that “Ragen created a prison universe that revolved around himself as the charismatic authority from whom all power emanates and to whom all loyalty is due. The main role of everyone in the

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<sup>110</sup> Prison Inquiry Commission, 227. Erickson, *Warden Ragen*, 24, 85.

<sup>111</sup> David Heinzmann, “Prison in Joliet Closing its Doors After 144 Years,” *Chicago Tribune*, 15 Feb. 2002.

<sup>112</sup> Jacobs, 2.

<sup>113</sup> Jacobs, 36.

prison, both the convicts and the guards, was to please Ragen.”<sup>114</sup> He tolerated no criticism from his staff, and his treatment of the few people who worked in the prison but did not report directly to him – such as the sociologist-actuaries, who assessed inmates for the state parole board – bordered on harassment. He generally disregarded the recommendations of the professional criminologists and psychologists who assessed and classified prisoners for rehabilitative treatment. Instead, he organized inmates so as to maximize control. He reportedly once turned down a federal grant for guard training to avoid having to allow outsiders into Stateville.<sup>115</sup>

Unsurprisingly, Ragen was largely dismissive of inmates’ rights. In a manual for new inmates he published in the 1960s, he made it clear that prisoners were entitled only to food, housing, clothing and medical care, “all other concessions are privileges granted by the officials of the institution and the Department of Public Safety.” Eschewing Progressive Era ideas about allowing his charges to exercise agency in their lives as a way of learning to handle the responsibilities of citizenship, Ragen believed in strict control and regimentation. He thought inmates’ councils led to chaos, and that “the days of personal autonomy should be over for the inmate from the moment he is dressed in until the time he is dressed out.” In Ragen’s view, external discipline was reformatory; it forced inmates to abandon their existing habits of mind and to develop entirely new ones. The process remade inmates as men who were respectful and obedient towards authority – traits Ragen considered key

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<sup>114</sup> Sullivan, 58.

<sup>115</sup> Few sociologist-actuaries stayed at Stateville for more than one or two years. One recalled being forced to enter through the visitors’ entrance and undergo a personal search every day for the three years he worked there, as well as regular searches of his office. Guards, in contrast, were typically subjected to a less intrusive search regimen after only one week. Jacobs, 30, 34-36.

components of good citizenship – and who were capable of exercising self-discipline.<sup>116</sup>

In practice, this philosophy led Ragen to create an environment so rigid that, according to Sullivan, “neither rebellion nor rehabilitation was possible.”<sup>117</sup> Inmates who criticized the prison to outsiders faced a week in solitary confinement and the loss of their work privileges, and “jailhouse lawyers,” inmates who attempted to effect change through the courts, often found themselves in segregation cells.<sup>118</sup> Some disciplinary problems spent more than a decade in segregation without the protections of due process.<sup>119</sup> It was only after Ragen left Stateville that inmates and outside groups concerned about conditions at the prison could begin having an effect on policies and practices there.<sup>120</sup>

However, while Ragen insisted that all things in his prison happen on his terms, he also supported several critical aspects of progressive prison philosophy. Philosophically, he opposed capital punishment and supported indeterminate sentences, prison education, recreational programs for inmates, good wages for inmate labor, individualized treatment programs, and, most importantly for Leopold, rehabilitation and parole.<sup>121</sup> Practically, he took his responsibilities to administer his institutions justly and professionally – by his own standards of the words – very seriously. In addition to his drive to strip the gangs of their power, he worked to professionalize staff and purge partisan influence in hiring as best he could. He was

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<sup>116</sup> Ragen and Finston, 61, 10-11, 48.

<sup>117</sup> Sullivan, 59.

<sup>118</sup> Ragen largely succeeded in curtailing convicts’ legal activities, although in 1943 a federal judge strongly and personally rebuked him for curtailing inmates’ rights to file writs of habeas corpus. Jacobs, 36-37.

<sup>119</sup> Jacobs, 50-51.

<sup>120</sup> Jacobs, 51.

<sup>121</sup> Ragen and Finston, *passim*, esp. 692-745.

never entirely successful, but he made substantial gains.<sup>122</sup> He also overhauled Stateville's disciplinary system, eliminating physical punishments in favor of revoking privileges for minor infractions and isolation for major ones.<sup>123</sup>

Ragen considered maintaining order and discipline his first responsibility, but he also sought to promote to the public the idea that prisons could and should prepare inmates for release. Critics charge that Ragen's claims to care about rehabilitation, and his belief that rigid discipline was the best way to induce it, were simply a disingenuously repackaging of his disciplinarianism in reformist trappings at a time when prison reform was becoming a popular topic in the media and among politicians.<sup>124</sup> But whatever his reasons, Ragen was a consistent advocate for parole, as well as the notion that prisons could and should work to reform their charges. His authoritarian policies might actually have helped him to speak up for progressive ideals.<sup>125</sup> As much of the public was beginning to question many of the practices of the 1920s and 1930s partly out fear that they were leading to crime on the streets and dissolution among prisoners, Ragen ruled his charges with a strong hand. He could advocate for reformist ideas like rehabilitation, professionalization of guards, and

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<sup>122</sup> Jacobs, 32.

<sup>123</sup> Erickson, *Warden Ragen*, 128-138. Segregation and isolation constituted two separate statuses. Segregation was a long-term status intended to protect guards and staff from chronically dangerous inmates, while isolation was a short-term punishment. Segregation was theoretically a less alienating and repressive status than isolation in that prisoners had better living conditions. For that reason, prison policy dictated that no inmate could be kept in isolation for more than fifteen consecutive days, while segregation could be indefinite. However, segregation was still a harsh regimen. Inmates were confined to their cells almost continuously, including during meals, and took their daily recreational period in the yard one at a time, severely limiting their ability to socialize. Erickson's *Warden Ragen of Joliet* provides an elaborate justification for the confinement of the two inmates who had spent the most time in segregation, more than 11 years apiece. Jacobs, 50-51; Ragen and Finston, 546, 552-554; Erickson, *Warden Ragen*, 131-138.

<sup>124</sup> Sullivance, 59.

<sup>125</sup> Joseph E. Ragen "Presidential Address." *Proceedings of the Annual Congress of the American Prison Association* (1951): 1-5.

education even as he oversaw a prison with little violence and no riots during the course of his administration.<sup>126</sup>

Leopold was able to appeal to both Ragen's administrative style and his view of prisons. Leopold was more than willing to acquiesce to Ragen's authoritarian nature, and the former's activities in prison made him a practical asset to the latter's efforts to improve Stateville's administration and public image. Moreover, the authoritarian stamp Ragen put on his office meant that personal relationships and informal statuses, the kinds of influence an inmate could acquire, meant a lot at Stateville.<sup>127</sup> Showing the same ingratiating nature towards authority figures that he had once used to charm the defense alienists, Leopold worked his way onto the warden's good side.

Leopold's letters to Ragen from the forties and fifties were very deferential, but also almost collegial, discussing ways to publicize the prison and its programs as though Leopold and Ragen's goals were shared. To an extent, they were: Ragen wanted to promote Stateville as an orderly place where constructive activities could occur and convicts could reform, and Leopold wanted to promote his own rehabilitation within Stateville.<sup>128</sup> Leopold discussed the public's perceptions of penology and reform, worked with Ragen on various matters, and even recommended initiatives of his own, such as Ragen submitting an article on the Stateville Correspondence School to the *Saturday Evening Post* (Ragen did not take Leopold up

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<sup>126</sup> McKelvey, 299-300; Jacobs, 42.

<sup>127</sup> Jacobs, 42-44.

<sup>128</sup> Carbons of much of Leopold's correspondence with Ragen, primarily from the 1950s, before the former's parole in 1958, are now in the NFL at CHS, especially box 34, folder 28. Box 16, folder 18, contains correspondence post-dating Leopold's parole.

on the idea).<sup>129</sup> Such suggestions might have been why Ragen once felt compelled to rather defensively state in the *Chicago American* that Leopold had never ghostwritten any of his speeches.<sup>130</sup> But, while Ragen was very concerned with keeping a professional distance from Leopold, he became the most important among numerous highly placed connections Leopold made within the penological community while in prison.

Most of the other connections were academics.

#### NATHAN LEOPOLD AND THE CHICAGO SCHOOL

At the same time Leopold was ingratiating himself with Ragen, he was becoming friendly with a group of criminologists who were revolutionizing American criminology and penology, to a great extent through research they conducted at Stateville. The sociology department of the University of Chicago was one of the founding institutions in American criminology. Standard Oil magnate John D. Rockefeller, the school's patron, was a big supporter of urban social work, and at the turn of the century, the sociology department focused on understanding the social and economic forces at work in slums.<sup>131</sup> In the 1920s, researchers at the school branched out more specifically into the sources of crime, approaching it as a symptom of "social pathology" in the poor sections of American cities. Their work dominated much criminological thought until the late 1930s, and its legacy went even farther. According to criminologists Thomas Blomberg and Karol Lucken, "many subsequent

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<sup>129</sup> Nathan Leopold (NL) to Joseph Ragen, 18 Sep. 1940, NFL at CHM, box 1, folder 9.

<sup>130</sup> Joseph Ragen, "Why I Believe in Leopold," as told to Gladys Erickson, *Chicago American Weekly*, 27 Apr. 1958.

<sup>131</sup> Thomas Blomberg and Karol Lucken, *American Penology: A History of Control* (New York: Aldine de Gruyter, 200), 101-102.



efforts to explain crime from the late 1930s to the 1960s largely involved attempts to refine, modify, or integrate previous Chicago School theories.”<sup>132</sup>

In the 1930s and 1940s, criminologists became more interested in studying prisons. As both popular and lay people began to think it necessary to reevaluate the penal practices of the previous few decades, penological scholarship began wielding more influence over policy than it had had in the past, and Stateville penitentiary developed a special relationship with the Chicago School.<sup>133</sup> Several sociologists from U of C and Northwestern began conducting research at Stateville, recognizing it as a plum locale from which to gather data on confirmed criminals who came from nearby cities.<sup>134</sup> Then, building on the new work in prisons, criminologists began to reassess the role of prisons themselves, especially after Donald Clemmer’s 1940 book *The Prison Community*.

Scholars had long studied the successes and failures of prisons at rehabilitating the criminals who arrived at them, but Clemmer analyzed prisons as an active source of criminality. Clemmer, a member of the Chicago School, based his work on his observations while working as a sociologist at Illinois’s Menard Penitentiary. He argued that new inmates entered prison scared and suspicious of their fellow inmates and the guards. Seeking out protection in small groups that reinforced hostility to correctional programs, they underwent a process he called “prisonization.” In other words, prison, instead of rehabilitating offenders, hardened their criminality by acculturating them to a convict mindset.<sup>135</sup>

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<sup>132</sup> Blomberg and Lucken, 99, 102.

<sup>133</sup> McKelvey, 299-300.

<sup>134</sup> Leopold, *Life Plus 99 Years*, 255, 258, 259, 263, 283, 296.

<sup>135</sup> Donald Clemmer, *The Prison Community* (New York, Rinehart and Company, 1940, 1958).

Before Joseph Ragen transferred to the twin prisons, he was warden at Menard for some of Clemmer's time there, and Clemmer's assessment of the warden is indicative of his, Clemmer's, critique of the prison system as a whole. Clemmer credited Ragen as a well-intentioned and effective administrator who balanced disciplinarianism with humanitarianism, all of which made him a vast improvement over his predecessor and spoke well of him as an individual. But in Clemmer's assessment, Ragen's individual virtues were not enough to let him overcome the inherent limitations of his position. The author's final words on Ragen were a rather backhanded compliment: "when one considers the confusing complexities of penal administration, one can but wonder that prison officials operating in a society such as ours handle the situation as well as they do." The entire approach to prisons was inconsistent and dysfunctional, and the situation could improve only with a coherent approach that had the support of professional administrators, politicians, and society as a whole.<sup>136</sup> Clemmer's work proved a watershed in the field, prompting a new scholarly focus on the relationship between prison administration and crime.<sup>137</sup>

Through Leopold's qualifications, his eagerness to help authority figures in prison, and his eclectic intellectual pursuits, he put himself in the center of this new school of criminology. He went to work for and quickly befriended Ferris Laune, Stateville's first sociologist-actuary, a professional who used variables to determine a given parole candidate's likelihood of success on the outside. Leopold helped Laune with the latter's doctoral thesis for three years, later published as *Predicting*

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<sup>136</sup> Clemmer, 62.

<sup>137</sup> McKelvey, 310-311.

*Criminality: Forecasting Behavior on Parole* (1936).<sup>138</sup> By Laune's own account, Leopold could have been listed as a coauthor, but the two men left his name off the project to avoid publicity.<sup>139</sup> In time, Leopold's field of acquaintances grew from Laune to include several of the country's foremost criminologists.

The full extent of Leopold's relationship with these men is hard to determine; Leopold himself was never modest in describing his own contributions or his connections. But Edwin Sutherland and Ernest Burgess, of the University of Chicago, and Arthur Todd, the Dean of Northwestern's sociology department, all sat on an advisory board for the Stateville Correspondence school in 1939, when it branched out to offering courses at the junior college level.<sup>140</sup> Leopold also worked with Lloyd Ohlin, then a graduate student at the University of Chicago, on a study of parole prediction that Ohlin presented at a meeting of the American Sociological Society in 1951, published in the *American Sociological Review* the following year. Leopold was listed as coauthor under a pseudonym. He chose the first name Richard.<sup>141</sup>

Leopold claimed to have nearly become a member of the Chicago School himself. He had ambitions towards getting a PhD in sociology, approaching first U of C and then Northwestern. In both schools, he supposedly had people supporting his application, including Arthur Todd, the dean at Northwestern, but the circumstances of incarceration ultimately precluded matriculation. Still, Leopold maintained, "in the two and a half years I spent in this work [with Laune] I probably had more

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<sup>138</sup> Ferris Laune, *Predicting Criminality: Forecasting Behavior on Parole* (Evanston and Chicago: Northwestern UP, 1936).

<sup>139</sup> Ferris Laune, affidavit, 9 May 1936, NFL at CHM, box 1, folder 17. The finding aid lists this as the folder for "Launo, Terris."

<sup>140</sup> Leopold, *Life Plus 99 Years*, 255, 258, 259, 263, 283, 296.

<sup>141</sup> Leopold, *Life Plus 99 Years*, 345-347; Lloyd E. Ohlin and Richard A. Lawrence, "A Comparison of Alternative Methods of Prediction," *American Sociological Review* 17, no. 3. (Jun. 1952), 268-274.

opportunity for intimate discussion with leaders of the field than I would have had on the campus of a university.” Leopold’s lack of formal education did not stop him from pursuing the subject with some success. In addition to his collaborations with Lloyd Ohlin and Ferris Laune, in 1935 he pseudonymously published an article of his own in the *Journal of Criminal Law and Criminology*. He then engaged in an epistolary debate in the *Journal*, and claimed to have had an expanded version of the article accepted for publication by the University of Chicago press when the *Daily Tribune* exposed his authorship and the deal fell apart.<sup>142</sup>

Leopold had connected himself to an elite community of reformers and put himself at the nexus of parole and rehabilitation studies. He did so, moreover, at a time when those topics were becoming subjects of increasing concern, especially in the 1950s after a series of riots appeared to demonstrate the dysfunctions of the American prison system.<sup>143</sup> But he did more than that. He used the unparalleled record of activities and accomplishment he amassed to make himself into a case study on the ability of an inmate to have a constructive life in prison. And whether he knew it or not, he was preparing for the time when he would draw on his pool of influential allies to present himself to the press that way.

#### RAGEN, LEOPOLD, AND STATEVILLE IN THE NATIONAL SPOTLIGHT

As Leopold worked his way into Ragen’s and various sociologists’ good graces, both Stateville and its warden developed national reputations. Loeb’s death and the ensuing scandal about administration and corruption had hurt Ragen’s early

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<sup>142</sup> Leopold, *Life Plus 99 Years*, 259, 261-263. William F. Lanne, “Parole Prediction as Science,” *Journal of Criminal Law and Criminology* 26, no. 3 (Sep., 1935), 377-400.

<sup>143</sup> Sullivan, 44-48.

reform efforts, but by the 1940s and 1950s, his authoritarian approach was yielding results. He had turned Stateville, which had grown to be the fourth-largest prison in the United States, into an institution with less violence, less corruption, and more industry than most of its contemporaries. In all Ragen's years as warden, there was not a single riot or escape from the twin prisons.<sup>144</sup> The stories of gang rule and disorder that reached a crescendo after Loeb's death became evidence of the effectiveness of Ragen's administration, a counterpoint to the order and fairness he introduced.<sup>145</sup>

Ragen's successes and his advocacy of reform allowed him to become a nationally respected expert on prison administration. Prison officials in other states often called upon him to consult on their own institutions, and in 1951 he served as head of the American Prison Association (now the American Correctional Association).<sup>146</sup> In the 1950s, while riots were breaking out in almost every major prison in the United States – but not Stateville – the APA named Ragen to its commission exploring the sources of prison violence. At only thirty-two pages, the Commission's final report was far shorter than the Illinois Prison Inquiry Commission's *Report to the Governor* nearly twenty years earlier, but it was more more explicit about blaming most riots on poor administration and underfunding.

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<sup>144</sup> Jacobs, 21. Seven men did escape from Stateville, in 1942, but Ragen had resigned in 1941, out of fear that an incoming Republican governor, Dwight Green, would interfere with his administration. The public furor over the escape led Green to ask Ragen to resume the wardenship. The escapees were all captured or killed within a few months of the breakout, following a manhunt spearheaded by the FBI. Erickson, *Warden Ragen of Joliet*, 155-172.

<sup>145</sup> See, for example: Erickson, *Warden Ragen*, passim; Day, "Why I Killed Richard Loeb," 54; Leopold, *Life Plus 99 Years*, 219.

<sup>146</sup> Jacobs, 28-29.

Both the report's criticisms and its recommendations were similar to those for which Ragen publicly advocated.<sup>147</sup>

Outside of professional circles, Ragen's media savvy helped him to cultivate his and his institution's reputations. He regularly cooperated with friendly journalists in the Chicago area to promote his administration, and by 1951 his and Stateville's profiles had grown high enough that journalist John Martin published a three part series on the prison in *The Saturday Evening Post* in 1951.<sup>148</sup> Four years later, Martin wrote a four part series for the *Post* that again dealt with life and policies at Stateville, but did so through a focus on its most infamous inmate, Nathan F. Leopold.<sup>149</sup>

Ragen's most successful promotion came in 1957 with *Warden Ragen of Joliet*, a highly complimentary profile of Ragen and Stateville for lay readers by journalist Gladys Erickson. The book was ostensibly a biography written by a detached journalist, but Ragen was deeply involved in its construction. He wrote the introduction and, waiving his standard distaste for outsiders, allowed Erickson free access to the prison. To celebrate the book's publication, he held an author's banquet for Erickson at Stateville. A few inmates, including Leopold, were among the invitees. Underlying the book's efforts to convey a sense of the overall atmosphere daily life in the institution was a twofold agenda. First, the book sought to convey the importance of structuring prisons to help inmates reenter society as responsible

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<sup>147</sup> Sullivan, 50-51. Committee on Riots, *A Statement Concerning Causes, Preventive Measures, and Methods of Controlling Prison Riots and Disturbances* (New York: American Prison Association, 1953).

<sup>148</sup> Jacobs, 33-34. John Bartlow Martin, "America's Toughest Prison," part I, 224, no. 16 (Oct. 20, 1951); part II, *Saturday Evening Post* 224, no. 17 (Oct. 27, 1951). Part III, *Saturday Evening Post* 224, no. 18 (Nov. 3, 1951).

<sup>149</sup> John Bartlow Martin, "Nathan Leopold's Desperate Years: Murder on his Conscience," part I, *Saturday Evening Post* 227, no. 40 (2 Apr. 1955); part II, *Saturday Evening Post* 227, no. 41 (9 April 1955); part III, *Saturday Evening Post* 227, no. 42 (16 Apr. 1955); part IV, *Saturday Evening Post* 227, no. 43 (23 Apr. 1955).

citizens. Second, it showcased the effectiveness of the changes Ragen had already implemented.<sup>150</sup>

Ragen recognized that Leopold could be of great use in promoting Stateville. He was central to many of the prison programs Erickson highlighted to show the gains made under Ragen's administration, such as the correspondence school, the library, and the malaria project. His connections with the Chicago School meant that he could be a good ambassador for the prison to some of the foremost criminologists in the country. And, perhaps most importantly, even decades after the events of 1924, Leopold's involvement in a prison program, even something as simple as donating a pint of blood, could still ensure press exposure.<sup>151</sup> In 1946, for example, Leopold gathered signatures – nearly 400, by his count – from inmates who agreed to donate their eyes if they died while in Stateville. The gesture was symbolic, since under Illinois law the next of kin needed to authorize donations. As of 1958, no convict's eyes had been harvested and Leopold doubted any would be. Nevertheless, journalists, including newsreel filmmakers, eagerly covered the day the inmates signed the contracts. They were especially interested in Leopold, who agreed to pose for a picture while signing his donation agreement.<sup>152</sup> (As it happened, Leopold did donate his eyes when he died, outside of prison, in 1971.<sup>153</sup>)

Leopold recognized that by cooperating with Ragen he could curry further favor with the warden while boosting his own profile. Gladys Erickson was a friend of Leopold's as well as Ragen's. Leopold, in fact, once lent her a copy of the

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<sup>150</sup> Erickson, *Warden Ragen*, 13-15; Jacobs, 33-34; NL to Gladys Erickson, 27 Aug. 1961, NFL at CHM, box 6, folder 8.

<sup>151</sup> "Leopold Gives a Pint of Blood," *Chicago Daily News*, 22 Aug. 1952.

<sup>152</sup> Leopold, *Life Plus 99 Years*, 335-336.

<sup>153</sup> Higdon, *Crime of the Century*, 340.

manuscript for his own unpublished prison memoir in the hopes that she would sign on as his coauthor, and she seems to have relied on the manuscript somewhat in writing *Warden Ragen*.<sup>154</sup> Leopold also contributed to the book directly. He was one of only three inmates – all famous, but Leopold most of all – to contribute an original essay for a chapter called “The View From Behind Bars.” Leopold voluntarily submitted his highly flattering essay, “Warden Ragen as I See Him,” to Ragen so that he could “look the material over and make any suggestions as to changes or additions” before it went on to Erickson.<sup>155</sup>

Leopold’s cooperation with Ragen and with the promotion of Stateville was not just about continuing his habit of ingratiating himself with authority figures. By the 1940s, according to Leopold-Loeb historian Hal Higdon, Leopold was seriously thinking about his prospects for parole, and began a “conscious, calculated, but subtle upgrading of his image” to further his efforts.<sup>156</sup> His and Ragen’s publicity aims dovetailed nicely. Publicizing the programs with which Leopold was involved promoted Leopold as a constructive and rehabilitated prisoner and promoted Stateville as a constructive and rehabilitative institution.

The prison malaria program was a boon to both men’s efforts, and in time brought Leopold directly to the threshold of release. In September 1944, a federally operated research team headed up by a doctor at the University of Chicago Medical School went to Stateville in search of test subjects for medical research. Malaria was

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<sup>154</sup> The two books, both being about Stateville, overlap heavily in subject matter. On Erickson having access to the manuscript of *Life Plus 99 Years*, NL to William Byron, 14 Oct. 1956, NFL at CHM, box 34, folder 52.

<sup>155</sup> NL to Joseph Ragen, 4 Mar. 1955, NFL at CHM, box 34, folder 28, p.1; Nathan Leopold, “Warden Ragen as I See Him,” in Erickson, *Warden Ragen*, 193-195.

<sup>156</sup> Higdon, *Crime of the Century*, 309.



severely hindering the US's efforts in the South Pacific, and in the pursuit of a cure, the team needed volunteers willing to be infected with the parasite and then used as human guinea pigs to gauge the effectiveness and side-effects of a variety of experimental pharmaceuticals. Volunteers received 100 dollars in compensation, with no guarantees of other special privileges or sentence reductions. Leopold, whose education and intelligence made him specially qualified among prison workers, joined the project as a research assistant, and in June 1945 he became a test subject, too, voluntarily contracting the disease. The project eventually led to the advent of the anti-malarial drug pentaquine, although not in time to effect the war.<sup>157</sup>

Name recognition helped bring Leopold into prominence as a volunteer in media coverage of the experiments. There was some dispute about his importance to the project's day-to-day operations. Leopold remembered himself as a vital and tireless worker, while two of the doctors, including the head of the research team, dismissed his contributions and his commitment.<sup>158</sup> Either way, he was a useful public relations device. He was one of only a handful of inmates selected to contribute to a radio broadcast on the project in January 1945, which also featured Warden Joseph Ragen and a recording from Illinois governor Dwight Green.<sup>159</sup> In 1945, *Life* magazine singled Leopold out in a photo spread it ran on the experiments. In the photo, he consults with a man in a U.S. Army uniform while a patient sits before them and a queue of prisoners stands behind them. It is clear that Leopold holds some special role in the process underway, and the caption informs the reader

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<sup>157</sup> Related programs were underway in the federal prison at Atlanta and the New Jersey State Reformatory. Baatz, 434-435; Higdon, 308; Leopold, *Life Plus 99 Years*, 309. "Prisoners Expose Themselves to Malaria," *Life* 18, no. 23 (June 4, 1945).

<sup>158</sup> Higdon, 308; Leopold, *Life Plus 99 Years*, 305-333.

<sup>159</sup> Leopold, *Life Plus 99 Years*, 327.

that the “convict assistant...is Nathan Leopold, still imprisoned for his part in the Leopold-Loeb case.”<sup>160</sup>

#### CONCLUSION – NATHAN LEOPOLD’S HOPES FOR RELEASE

Volunteers for the malaria experiment received no assurances of sentence reduction for their service, but many participants, including Leopold, knew that time off was a possibility.<sup>161</sup> In February 1947, Governor Dwight Green instructed the Illinois parole board to evaluate the cases of malaria volunteers who had completed their minimum sentences for eligibility. Leopold did not qualify, but in January 1948, he and the other volunteers who were not yet eligible for parole received permission to petition for executive clemency. Leopold’s petition hearing took place the following year. Green might have wanted the hearing delayed so that it would not affect his prospects for reelection in 1948, but if so his machinations did not save him; the hearing came early in the administration of incoming Democrat Adlai Stevenson.

Several of the people with whom Leopold had worked and grown close over the course of his incarceration testified at the hearing, including the former prison chaplain and two prominent sociologists, one from the University of Chicago and one from Northwestern University. Two of Leopold’s most important academic allies, Edwin Sutherland of the University of Chicago and Arthur Todd, the chair of Northwestern’s sociology department, had died, but Leopold had secured letters of recommendation from both of them; evidently he anticipated a need for the letters years in advance. The parole board interviewed Leopold at Stateville about two

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<sup>160</sup> “Prisoners Expose Themselves to Malaria,” 44.

<sup>161</sup> Leopold, *Life Plus 99 Years*, 331-332.

weeks after the public hearing. Five reporters, as well as Warden Ragen, were in attendance. Leopold did not command the multiple front-page stories he had in 1924, but the possibility of his release was still newsworthy.<sup>162</sup>

The parole board announced its decision in September 1949. It commuted Leopold's ninety-nine year sentence for kidnapping to eighty-five years, and left his life sentence for murder untouched. Under Illinois parole practices, the decision effectively reduced the time period until Leopold's parole eligibility by five years, making him eligible for his first parole hearing in January 1953. The board's decision did not, as Leopold would bitterly discover, guarantee that he would actually get parole when that time came around. But, though the board's decision technically only made Leopold eligible for parole in four years instead of nine, it sent a message beyond that. The board's willingness to discuss the timeline for Leopold's release made more real a prospect that had theretofore been largely theoretical: Nathan Leopold, who had once been considered lucky to escape the gallows and who was still one of the most infamous murderers in the United States, might get out of prison alive.

Leopold had a long way yet to go before he was released. In 1949, his parole was still almost ten years away, with multiple proceedings, gains, and setbacks yet to go. Throughout most of the interim, he became increasingly convinced that popular opinion would be determinative in the success or failure of his applications for release. Accordingly, he waged an increasingly assertive public relations campaign to convince the public of his rehabilitation. That project entailed more than simply

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<sup>162</sup> Leopold, *Life Plus 99 Years*, 340–342; George Wright, "Thrill Killer Leopold Makes Bid for Liberty," *Chicago Tribune*, 13 Apr. 1949; "Witnesses Testify: Thrill Killer Leopold Held 'Safe' for Parole," *Los Angeles Times*, 13 Apr. 1949.

focusing on his many constructive activities in prison. As early as 1936, he and Loeb had already done enough work with the Stateville Correspondence School, and Leopold with the prison library, to assert that they were reformed, or at least on the way to it. Instead, upon Loeb's death the Franks murder was deemed a sexual murder, which was if anything a worse crime than the one to which Leopold and Loeb had confessed.

In order for Leopold to mobilize his prison experiences in such a way as to offset the continuing hostility towards him for the Franks murder, he had to weave those experiences into a narrative of their own. His story would have to counter beliefs that he was an irredeemable monster, but it would also need to be compatible enough with people's popular perceptions of the Franks case to be credible to the public. In other words, as with the narratives of Loeb's death, Leopold's story needed to feel right to people given their preconceptions about him and his crime. For his story to do that, he would have to deal with the developments from the 1930s and 1940s that affected perceptions of his case. In particular, he would have to figure out how to exculpate himself within what was, since Loeb's death, a crime irreversibly connected to homosexuality and the antipathy thereto.

Properly framed and manipulated, however, the developments were not all bad for Leopold. The coverage that surrounded Loeb's death, and its connection to a prominent contemporary issue – though it was unfortunate for Leopold that that issue was sexual psychopathy – had established the case as an event of ongoing importance, which meant that people would want to listen to Leopold's side of the story when he was ready to tell it. Loeb's death had also shown that the case's

characteristics were somewhat mutable, an attribute Leopold could use to reframe his part in the Franks murder. And finally, Leopold's activities in prison and the significance attached to his crime left him well positioned to speak to popular concerns about how certain social issues and certain types of crime.

It fell to Leopold to create and disseminate a narrative that would frame all of those elements of his case, good and bad, in such a way as to secure his freedom.

## CHAPTER THREE

### “TODAY, I AM A MATURE AND NORMAL MAN”: NATHAN LEOPOLD AND THE NORMALITY NARRATIVE

“[Leopold’s] statement would have to cover the case so completely as to obviate the number of potentially embarrassing questions that might be put to him...The statement would have to explain how he could have been involved in so hideous a crime; how Loeb’s role had been the greater and his the lesser...It also had to persuade everyone of his remorse and rehabilitation as well as to satisfy the [Parole] Board that if freed, he would never become an embarrassment to the men who set him free.”

– Elmer Gertz, Attorney for Nathan Leopold<sup>1</sup>

## INTRODUCTION

From 1952 until his parole in 1958, Leopold grew increasingly convinced that public sentiment, or at least the Illinois Parole Board’s perception thereof, would be a determining factor in the disposition of his case. He and his advocates accordingly sought to refashion the media-disseminated narrative of his life and crime into one conducive to his release. For decades after the Franks murder, Leopold and Loeb’s status as archetypical criminals of some sort or another had been virtually uncontested in public sphere discussions over the causes and “nature” of their criminality. But Leopold and his advocates, with the advent of what I call the normality narrative – Leopold’s largely self-styled story of rehabilitation in prison – introduced the first substantive challenge to the view of Leopold as incorrigibly criminal. The result was a new interpretation of the case, one that cast the young Leopold of 1924 as a somewhat sympathetic figure and the adult Leopold of the 1950s as a redeemed one.

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<sup>1</sup> Elmer Gertz, *A Handful of Clients* (Chicago: Follett, 1965), 97-98.

Decades after Leopold himself had faded from the scene, elements of this interpretation continued to effect how people perceived the connections among abnormality, same-sex sexuality, and crime in the Leopold-Loeb case.

### LEOPOLD'S CHANGING POSITION IN NATIONAL MEDIA

In *Natural Born Celebrities: Serial Killers in American Culture* (2005), scholar David Schmid argues that serial murderer Ted Bundy parlayed his notoriety into a status as a *de facto* expert on serial murder. Law enforcement personnel, true-crime writers, and the reading public were fascinated by Bundy and wanted to understand him. Bundy used this fascination, and the fact that only he could provide firsthand explanations for what drove him, to gain legitimacy for his self-proclaimed expertise on the type of crime he had committed. "This expert status existed in a mutually supportive relationship with Bundy's fame," Schmid writes, "Bundy's fame was another contributing factor in his acquisition of expert status, and his status as an expert increased his fame even more."<sup>2</sup>

During the postwar era, Leopold similarly mobilized the public's continuing interest in and desire to understand his case, but Leopold took the public's fascination with him in a different direction from Bundy. Bundy, who was sentenced to death, had embraced his notoriety as a murderer as the basis for the persona he crafted. Leopold, who had ambitions for parole, tried to shed his notoriety while keeping his public prominence by making himself a symbol of redemption. From 1952 until his death in 1971, he became increasingly assertive in seeking to replace his prison biography with his crime as the definitive element of his public persona.

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<sup>2</sup> David Schmid, *Natural Born Celebrities: Serial Killers in American Culture* (Chicago: Chicago UP, 2005), 216-221, 217.

Loeb's death facilitated Leopold's efforts. Loeb had died in 1936 without ever having had the opportunity to try to replace the story of his crime with one of his rehabilitation as the definitive element of his public persona. He could not contribute to or contest revisionist accounts of the Franks murder and his own or Leopold's role therein. Leopold, by contrast, could work to reshape his public image, and did so as the only principal from the 1924 case still alive and in the public eye in the postwar era. He could offer an authoritative firsthand voice on the dynamics of his relationship with Loeb and how that relationship led to Bobby Franks's murder. He could work to make himself the lead character in the case's story, and to craft the story into one that served his interests.<sup>3</sup>

In retrospect, the years 1952-1958 constitute the first of two critical phases in which Leopold tried to direct public sphere narratives of the Leopold-Loeb case. Beginning with the press attention he received for the malaria project, Leopold became a prominent voice in the discourse of the narrative of his case. He accepted that discourse as something beyond his control, but he was able to help shift much of the emphasis in public discussions of the Leopold-Loeb case in ways that helped his case for parole. He was successful enough that, beginning in 1958, he began to enter the second phase of his postwar relationship with the Leopold-Loeb narrative, where he sought unequivocal ownership of his story and therefore of the case as a whole. This phase, which continued until Leopold's death in 1971 and which will be addressed in another chapter, was never as successful as his earlier, less aggressive efforts. Throughout his pursuit of parole from 1952-1958, and particularly from 1953-

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<sup>3</sup> The only other major figure from the 1924 event who was still alive for most of Leopold's postwar parole campaign was District Attorney Robert Crowe, who died shortly before Leopold's final hearing. Crowe did not take a prominent public position on Leopold's parole.



1958, he found considerable success in redirecting representations of his sexuality, his personality, and his life narrative by cooperating with the public discourse of his crime rather than seeking to control it.

During Leopold's time in prison and on parole, he also differed from Bundy in that Leopold expressly denied any sort of expertise about his crime.<sup>4</sup> He characterized his rehabilitation as an intensely personal experience, too individualized to allow for generalizations about the entire criminal justice system. His reticence, however, derived from a combination of circumstance and strategy, not conviction. In prison, correctional rules and authorities put constraints on his actions and the content of his statements, and he would not in any case have wanted risk alienating the warden or the parole board.<sup>5</sup> While he was a parolee, Leopold was further constrained by a special restriction that forbade him from attracting any publicity.<sup>6</sup> Once he became a fully free citizen upon his discharge from parole in 1963, however, he began publishing and lecturing on penology and the need for reform, confident in presenting himself as an authority on the subject.<sup>7</sup> And although he avoided making unseemly claims of entitlement to parole (except in private) during his campaign for release, underneath his affected humility he worked very consciously to create a narrative that surrogates could use to make such claims on his behalf.<sup>8</sup>

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<sup>4</sup> Parole Board Stenographic Report, 5 Feb. 1958, The Leopold-Loeb Collection at Northwestern University (LLC at NWU), box 3, folder 6, p. 7.

<sup>5</sup> Samuel Walker, *Popular Justice: A History of American Criminal Justice*, 2<sup>nd</sup> ed. (New York: Oxford UP, 1998) 177.

<sup>6</sup> Parole Agreement for NL, 13 March 1958, LLC at NWU, Box 3, Folder 13.

<sup>7</sup> Nathan Leopold, "Imprisonment has no future in a Free Society," *Key Issues: A Journal of Controversial Issues in Criminology* 2 (1965): 24-33.

<sup>8</sup> In a letter to Erle Stanley Gardner, Leopold pointed out that he could be a symbolic success story for rehabilitation and parole; NL to Erle Stanley Gardner, 9 Aug. 1957, box 35, folder 1.

Leopold's prison biography, as it existed in the public sphere, was never entirely his to control, and there is no one idealized template that wholly defines the normality narrative. The narrative denotes only a certain way of perceiving Leopold's actions and interpreting his personality, and it was part of a discussion to which many contributed. But Leopold was the narrative's chief architect as well as its subject. *His* idealized version of it, which he continuously refined, is therefore a useful vehicle through which to study the narrative's basic tenets, as well as how the prolonged controversy over Leopold's parole reshaped constructions of the case in the postwar era.

"Maturity," as Leopold used the word, was a panacea for all of the psychological problems that underlay his part in Robert Franks's murder. His senses of conscience and social consciousness were not *absent* from his psychological makeup in 1924, Leopold maintained, they were *latent*, and as he matured so too had they, making a new man of him. The defense alienists in 1924 had deemed both him and Loeb immature, seeing their immaturity as one of a range of traits that made the two defendants mentally abnormal. In the 1950s, Leopold used the supposed acquisition of that one trait to provide a pat explanation for how he had acquired normalcy, and should be allowed to leave behind everything about his past that led to the perception of him as abnormal. The myriad complexities and nuances that had characterized the troubled young man in 1924 were summarily dismissed under his use of the concept. Most importantly, his lack of maturity explained his relationship with Loeb and his participation in the 1924 crime, and his subsequent acquisition of it explained why he should be released.

### THE NORMALITY NARRATIVE IN HISTORICAL CONTEXT

Though Leopold echoed some of the terminology of the 1924 alienists, he intended the normality narrative for a popular audience in the 1950s. Neither normality nor maturity were clinical concepts as he used them. The cunning of the Leopold's story of rehabilitation was in the way that it convincingly simplified professional psychiatric concepts for a lay audience at a time when the former held particularly strong authority over the latter. Psychoanalytic thought about personality development had made great gains in popular authority by the mid-twentieth century, and normality had become an imperative, something people actively cultivated. Leopold spoke to those trends with a succinct and accessible narrative of how he had become normal according to mid-twentieth-century American standards of the word. He was able to describe his own rehabilitation in a way that had continuity with perceptions of 1924, but which also resonated with people living in the post-World War II United States.

Several historians acknowledge Leopold's efforts to improve his public image in the postwar era. Hal Higdon, author of the seminal history of the case, *Leopold & Loeb: The Crime of the Century* (1975), reconstructs some of Leopold's press activities in a chapter on Leopold's parole, noting that in the late 1940s Leopold broke more than 25 years of media silence to engage in "a conscious, calculated, but subtle upgrading of his image."<sup>9</sup> Paula Fass and David Churchill – both of whom approach the Leopold-Loeb case as a culturally constructed event continuously reshaped according to new historical contexts – each recognize key elements of the

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<sup>9</sup> Hal Higdon, *Leopold and Loeb: The Crime of the Century* (Urbana, Ill.: U of Illinois P, 1975, 1999), 309. Higdon discusses Leopold's pursuit of parole on pages 304-320.

normality narrative. Fass argues that in order to secure parole “Leopold...actively accepted the framework of definition that by the 1950s securely anchored” perceptions of his criminality, but sought to use it to his advantage by connecting his rehabilitation with his aging. He created a conception of his crime that acknowledged the roles that his “precocious childhood behavior, psychological abnormality, and sexuality” had played in leading him to the murder of Robert Franks. But in Leopold’s version of events “the three issues were packaged together and safely placed in the past” because he had grown up to repudiate both Franks’s murder and the traits and behaviors that he claimed had led him to commit it.<sup>10</sup> This depiction of personal transformation allowed Leopold to claim that he fully understood the horror of the Franks murder and accepted responsibility for his part in it while simultaneously distancing himself from the nineteen-year-old Leopold who had committed the crime. Churchill, building on Fass’s work, analyzes Leopold’s use of the concept of maturation to explain away his crime and his sexual relationship with Loeb by appealing to postwar psychosexual thought.<sup>11</sup>

These works, however, do not explore the full scale of Leopold’s actions or the scheming that underlay them. Higdon provides little analysis of the content or significance of Leopold’s message. Nor does Higdon convey the scale of Leopold’s operations in the 1950s, when the latter’s pursuit of a reformed public image, while conscious and calculated, was anything but subtle. Fass and Churchill, in contrast, view Leopold’s parole hearings as discrete events, largely removed from the case’s

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<sup>10</sup> Paula Fass, “Making and Remaking an Event: the Leopold and Loeb Case in American Culture,” *Journal of American History* 80, no. 3 (Dec. 1993): 947.

<sup>11</sup> David Churchill, “Queer Histories of a Crime, Representations and Narratives of Leopold and Loeb,” *Journal of the History of Sexuality* 18, no. 2 (May 2009): 317-320.

re-emergence in the spotlight. They analyze Leopold's efforts at release through the transcripts of those hearings, and use selections from Leopold's public representations of his crime and rehabilitation primarily to flesh out the story he and his advocates presented to the parole board.

I argue that the parole hearings themselves, while undeniably crucial for the disposition of Leopold's case, were only the most obvious element of Leopold's pursuit of freedom. After a disastrous first parole hearing in 1953, Leopold determined that his only hope for securing release through either parole or a gubernatorial pardon would be to sway public opinion in his favor and bring it to bear on the formal proceedings over his petitions. For the next five years, he nurtured a public sphere discussion that made his possible release into a burning social issue. He thereby helped to create a new cultural sensation out of Leopold-Loeb that was distinct, though not wholly separate, from the crime that had first brought the case into public prominence. Consequently, where previous historians have treated Leopold's activities in the 1950s largely as an epilogue to the events that led to his incarceration in 1924, I view his campaign for parole as an important turning point for the discourse of the Leopold-Loeb case.

In adapting the characteristics of his case to re-infuse it with meaning, Leopold created a conception of his and Loeb's criminality that validated postwar era perceptions of correlations among same-sex sexuality, psychological abnormality, and murder. And he spread this conception so successfully that it became largely taken for granted in popular perceptions of the Leopold-Loeb case, and some ways still is. Leopold was telling the story of his past very much in the present, playing to

the desires and interests of an audience from the post-World War II era. He sought to address and adjust the continuing legacies of 1924 to shed the stigma of specific types of nonconformity to which his own admissions in 1924 still exposed him three decades later. And he was worried about how those types of nonconformity denoted criminal and/or sexual deviance in the 1940s and 1950s, not the mid-1920s.

#### THE NORMALITY NARRATIVE, THE POSTWAR DOMESTIC CONSENSUS, AND POSTWAR PSYCHOLOGY

With each step in the evolution of his prison biography, Leopold further tailored the meaning of his maturity towards what historian Elaine Tyler May terms the “domestic consensus” of postwar normality. The war had caused unprecedented upheaval in mid-twentieth century American social, gender, and familial conventions: masculine aggression became legitimized through military service, women became more prominent as wage workers, and an increased number of children, at least in theory, received less parental supervision because of the disrupted familial structure. These disruptions found social acceptance during the war through their ostensible ephemerality, as temporary suspensions of certain perceived social values in order to protect those values for restoration after the war. Then, in the late 1940s and 1950s, the popular desire for a return to a nostalgically fictive prewar model combined with the tensions and anxieties of the Cold War to create the domestic consensus, an idealization of the nuclear familial home as the basic unit for physical, emotional, and national security. Expressing agreement with the consensus’s values – which idealized the nuclear family structure consisting of a breadwinning father, homemaker mother, and well-adjusted, obedient children who all found happiness

and fulfillment within the home's confines – served as a sort of shibboleth for national unity and stability, particularly among prosperous white Americans.<sup>12</sup>

The intensity with which white middle class Americans embraced the consensus was concomitant with an equally intense response to perceived threats to it, raising almost any kind of activities that fell outside of the consensus to the level of a threat to personal and/or national security. If Leopold wanted to garner public support for his parole, it was imperative that he avoid being subject to that backlash. Specifically, he had to counteract his apparent compatibility with two particular types of criminal deviant that triggered national panics in the postwar era: the juvenile delinquent and the sexual psychopath. The former label could aid Leopold's efforts, but only if used to designate a problem he had outgrown. The latter label would have been an unmitigated impediment to his acquisition of public sympathy.

The public, media, and governmental reactions to the sexual psychopath and juvenile delinquency panics demonstrated that their concern lay in defining, protecting, and enforcing consensus values. Historian George Chauncey, analyzing the psychopath scare, argues that the roots of the scare lay in an imperative to protect and enforce an a conception of normality rooted in conformity:

The postwar consensus...maintained that to be sexually 'normal' was to behave in a way that the dominant culture considered not only socially acceptable and moral, but also statistically average and 'mature;' the term 'normality' thus embodied a moral judgment, a statistical presumption, and a psychological goal all at once. Failure to adhere to the sexual conventions,

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<sup>12</sup> Elaine Tyler May, *Homeward Bound: American Families and The Cold War Era* (New York: Basic Books, 1990); For a discussion of the war's effects on conventional gender relationships, see Susan Hartman, *The Home Front and Beyond: American Women in the 1940s* (Boston: Twayne Publishers, 1982) and Estelle B. Freedman, "Uncontrolled Desires: The Response to the Sexual Psychopath, 1920-1960," *Journal of American History* 71, no.1 (June 1987): 83-106; For a discussion of the war's perceived effect on youth, see: James Gilbert, "Rehearsal for a Crime Wave," Chapter 2, *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent in the 1950s* (New York: Oxford UP, 1986), 24-41.

moral standards, and (supposed) majority of one's culture made one a deviate.<sup>13</sup> [parentheses in original]

In such a climate, for Leopold to convincingly demonstrate that he was rehabilitated, he needed to prove that he was “normal” according to the narrow standards of postwar society. Hence, when Leopold said that he had matured, he was in effect saying that he had become normal, and he tried to demonstrate his maturity/normality through exclusion; more often than not, he sought to substantiate his claims that he was a *normal* person by evidencing that he was not *abnormal*.

As he sought to do so, his case once again became embedded with popular perceptions of psychiatry and human behavior. Between 1924 and the post-World War II era, psychoanalytical interpretations of human behavior had gained a great deal of traction within both the psychiatric community and, more importantly for Leopold, among the general public. The military's use of psychoanalytical research and treatments during World War II allowed psychoanalysts to expand the scope of their discipline while also showcasing their work's potential to the public. By 1945, psychoanalysis was growing as a field, becoming further professionalized, and entering what historian Nathan G. Hale called its twenty-year “Golden Age of Popularization,” in which it became virtually synonymous with psychiatry in popular accounts.<sup>14</sup>

Psychoanalysis's popularity was borne in part of the conception of a distinctly American adaptation of the discipline that was perfectly suited to postwar culture, particularly given the domestic consensus's emphasis on conformity. In the

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<sup>13</sup> George Chauncey, “The Postwar Sex Crime Panic,” *True Stories from the American Past*, ed. William Graebner (New York: McGraw Hill, 1993): 160-178; 167.

<sup>14</sup> Hale, 211-230, 276-299.



first three decades of the twentieth century, psychiatrists moved their profession's province beyond the asylum and into mainstream American society by positioning themselves as arbiters and explicators of normality and abnormality. The process left the discipline primed for a time in which conservatism and normality were as imperative as they were in the postwar era, and in the 1940s and 1950s, psychoanalysts began applying their techniques towards the American mainstream on a broader scale than ever before. Psychoanalytical thought held that normality was a matter of degree, a precept which allowed psychoanalysts to offer the public a cutting edge tool that would allow its partakers to continuously become more normal.<sup>15</sup> Hale argues that popular media combined with psychoanalysts' efforts to create the image of a "pure" American version of psychoanalysis, whose ultimate outcome was normalcy and happiness." Journalists portrayed psychiatrists as scientific experts in a time of firm enthusiasm about technology, technicians who specialized in the mechanics of the human mind, and simplified complex, nuanced theories to show how those technicians could use therapy to cure, or fix, anything that was keeping patients from normality and happiness.<sup>16</sup>

Leopold appealed to these trends on an intuitive and implicit level. Instead of explicitly citing scholarly theories or popular perceptions regarding personality development, he simply told a story compatible with the values and perceptions of the culture in which he was making his bids for release. He explained what was psychically unhealthy in him at the time of Bobby Franks' murder and, in much greater depth, how he had become cured of those problems. His explanations were

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<sup>15</sup> Elizabeth Lunbeck, *The Psychiatric Persuasion: Knowledge, Gender, and Power in Modern America* (Princeton, NJ: Princeton UP, 1994).

<sup>16</sup> Hale, 257, 276-277.

simplistic, but they described his personality development in a way to which the general public was very receptive. It is impossible to know to what extent Leopold believed his own story and to what extent he was consciously creating it because he thought it was in his best interest, but Leopold's correspondence from the time he was pursuing parole indicates that strategy was always at the forefront of his thinking.

### THE EMERGENCE OF THE NORMALITY NARRATIVE, 1952

Leopold first began to articulate the normality narrative and learn of its utility for conveying his rehabilitation and maturity when he cooperated on a three-part feature in the *Chicago Herald American* in 1952. The series, "Leopold's Own Story," was based on a two-hour interview *American* staff writer Gladys Erickson conducted with Leopold on his life in prison and hopes for parole.<sup>17</sup> Leopold and Erickson had first met during Leopold's work for the malaria project years earlier,<sup>18</sup> and the 1952 series was the fifth interview Leopold had granted Erickson since 1947.<sup>19</sup> At least one earlier article contained some elements of Leopold's use of his activities and experiences in prison to portray himself as a changed man, but its coverage was anecdotal.<sup>20</sup> The 1952 series, by contrast, was a calculated effort to systematically construct a prison biography that made an argument about the kind of man Leopold was.

Erickson was a friend (and eventual biographer) of Stateville Warden Joseph Ragen and shared his beliefs about the importance of demonstrating to the general

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<sup>17</sup> Gladys Erickson, "Leopold's Own Story," *Chicago Herald-American*, part II: "Ready to Spy Against Reds," 22 Aug. 1952.

<sup>18</sup> NL to Gladys Erickson, n.d., Nathan F. Leopold Collection at the Chicago History Museum Research Center (NFL at CHM), box 34, folder 52.

<sup>19</sup> Erickson, "Leopold's Own Story," part I, "My 28 Years in Prison," p. 6.

<sup>20</sup> Gladys Erickson, "Leopold tells Prison Story," *Chicago Herald American*, 1 March 1947, p. 1, 2.

public the value of rehabilitation and parole programs. Her portrayal of Leopold reveals an appreciation for his potential public relations value as a success story of prison rehabilitation. Leopold, who for obvious reasons was also eager to realize that potential, wrote years later that “she leaned over backward in bringing out facts favorable to me.”<sup>21</sup> One installment contained a brief subsection on Leopold’s feelings that he had reached maturity. But more importantly, many of the activities covered by the series, and the overall tone of what those activities say about Leopold, became critical elements Leopold used to evidence the normality narrative in later years. The month after it ran, in a letter to his brother Foreman discussing the series’s potential to help his image, Leopold raised the possibility of writing a full-length prison memoir calculated to help his parole.<sup>22</sup> The finished book was published under the title *Life Plus 99 Years* in 1958, and contained many of the same points and methods first expressed in the Erickson series. For about two years between early 1955 and early 1957, Erickson and Leopold were in serious discussions for Erickson to serve as coauthor.<sup>23</sup>

All three installments in the *American* series elaborated on Leopold’s accomplishments in prison, which Erickson called “a record of unparalleled mental achievement in American prison history.” The series touched on almost all of Leopold’s prison projects, often more than once, and the third installment concluded the series by covering Leopold’s work to help other inmates, particularly the correspondence school he had founded with Loeb. Erickson used these descriptions of Leopold’s activities, and his professed readiness to use his abilities for good, to

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<sup>21</sup> Nathan Leopold, *Life Plus 99 Years* (Garden City, N.Y.: Doubleday, 1958), 352.

<sup>22</sup> NL to Foreman Lebold, 10 Sep. 1952, NFL at CHM, box 1, folder 9.

<sup>23</sup> NFL at CHM, box 28, folder 1.

tantalize readers with the benefits he could have for society if given his freedom. She devoted much of the second installment, “Ready to Spy Against Reds,” to Leopold’s efforts to learn Russian so that he might serve US intelligence in some capacity in the struggle against the Soviet Union. The same installment included several adamant denunciations from Leopold of communism’s evils, a way of indicating to readers, at the height of the Cold War, that he was allied with them in their antipathy. Leopold therefore got to be both a regular American disgusted by the “red menace” and an intellect too exceptional to go to waste during the struggle.<sup>24</sup>

As Erickson and Leopold’s discussion of his hopes to combat communism demonstrates, the series sought to establish Leopold’s reformation through the *meaning* that he found in his work in prison, not just the work itself. Erickson intimated insights into Leopold’s inner-life to lend credence to the notion that his rehabilitation was integrated into his personality, using his activities to evaluate him as a person. In the series’s first installment, sub-headlined “Wants to Serve Others if Allowed his Freedom,” Erickson describes Leopold’s work on inmate education as a great success and a boon for the prison, but Leopold himself as modest about his contributions. He came across as someone who did not measure his success by the recognition he received or how big his programs grew. Speaking of his work in education, Leopold told Erickson “I have learned that the greatest satisfaction in life is in knowing the people around you and in being able to help them,” meaning that he had both learned to blend into society and found contentment in being an altruistic member thereof.<sup>25</sup>

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<sup>24</sup> Erickson, “Leopold’s Own Story,” part II, “Ready to Spy Against Reds,” 1, 6.

<sup>25</sup> Erickson, “Leopold’s Own Story” part I, “My 28 Years in Prison,” 6.

Erickson also helped Leopold by asking him leading questions that invited flattering answers, making the series perhaps the least subtle of all Leopold's efforts to spread the normality narrative, even more so than his official autobiography: "Apparently you have learned the lesson of reconciliation to the point that you've been able to survive this ordeal with flying colors. Do you feel that someone who survives heartbreak, misfortune, error – or a situation like yours – is a stronger character for it?" Unsurprisingly, Leopold felt that it did.<sup>26</sup> In another instance Erickson asked Leopold if "his long prison experience aided Leopold in achieving the maturity that makes for a solid citizen." Leopold's reply: "Certainly. Going to prison... hastens maturity. And, please let me add that I think it was irresponsibility—the awful irresponsibility of youth—that sent me here back in 1924. I can in all sincerity and truthfulness declare that, 28 years later, today I am a mature and normal man."<sup>27</sup>

As could be expected, Leopold was extremely pleased with the series. He later wrote that he considered the coverage part of a turning point in the news press's treatment of him. He recalled that the series prompted more interviews, newspaper polls soliciting readers' opinions, and the like, and that the positive spin on his case inspired people to write letters in support of Leopold's parole to the parole board, the governor, or Warden Ragen.<sup>28</sup>

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<sup>26</sup> Erickson, "Leopold's Own Story" part I, "My 28 Years in Prison," 6.

<sup>27</sup> Erickson, "Leopold's Own Story," part II, "Ready to Spy Against Reds," 6.

<sup>28</sup> Leopold, *Life Plus 99 Years*, 352-353; Whether consciously or not, Leopold might have been eliding the extent to which his own actions helped bring about those developments

### 1953 – THE DEVELOPMENT OF THE NORMALITY NARRATIVE AS STRATEGY

In spite of the shift in the press and the public's attitudes towards him, Leopold's first parole hearing in January 1953, about five months after the Erickson piece ran, was an unmitigated disaster for his prospects for freedom. January 1953 was also when Adlai's Stevenson's gubernatorial term ended, and Leopold's case wound up straddling the transition from the outgoing Stevenson to the incoming William Stratton, a Republican. A three-man committee from the five-person parole board reviewed Leopold's case and heard testimony while Stevenson had four days remaining on his gubernatorial term. But two hours after Stratton was sworn into office, he restructured the board, replacing two of the three members who had heard Leopold's case. The following May, the full, reconstituted board voted by a majority decision to deny Leopold's petition. Moreover, the board gave Leopold a twelve-year continuance; he would not even be allowed to *apply* for parole again until 1965, when he would be sixty years old. It was the longest continuance in Illinois history.<sup>29</sup>

Technically, Leopold had ways of appealing the parole board's decision, but somewhat paradoxically, all appellate routes required that he go through the board whose decision he was appealing. He could ask for a rehearing on his parole, but the determination whether to rehear the case was up to the board, as would be the final decision at a new hearing, so the board essentially ruled on the appeals of its own decisions. Leopold could also apply for gubernatorial clemency in the hopes of receiving a sentence reduction or even an outright pardon. But a three-person subcommittee of the board – whose official name was the Illinois State Parole and

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<sup>29</sup> Higdon, 310-313.

Pardon Board – heard all clemency petitions, and submitted a recommendation for or against the application to the Governor of Illinois. The recommendation was not binding on the governor, but undoubtedly a strong influence on his decision. Thus, every initiative Leopold made for his release went before all or part of the parole board, whether it was a parole hearing or not. As a result, between 1953 and 1958, he was continuously in the process of trying to overcome the board's resistance to his parole.

Leopold was aware that political considerations affected his case, but he was plagued for the rest of his time in prison by his belief that the 1953 decision was largely the result of his own failure to show adequate remorse. He recalled years later that when he testified before Stratton's reconstructed board in May, he had been unable to explain why he had participated in the Franks murder, or even to express to the board how sorry he was about the life he took.<sup>30</sup> In particular, he was consumed by what he considered his inadequate answer to board member John Bookwalter's question whether, over the course of his 29 years in prison, he had come to understand why he committed the Franks murder.<sup>31</sup>

Even in 1953, Leopold felt that he had not adequately diffused the Franks murder's stain on his image, and tried to correct his mistake. On May 8<sup>th</sup>, shortly after his testimony but while the board's decision was still pending, he sent the board members a two-page letter in which he tried to better answer Bookwalter's question, expounding upon his understanding of the Franks murder and his sense of responsibility for it. He stood by his assertion in January that he could find no reason

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<sup>30</sup> Leopold, *Life Plus 99 Years*, 363.

<sup>31</sup> NL to Parole Board, 8 May 1953, LLC at NWU, box 3, folder 13.

for his crime, referring to it as “a completely motiveless, senseless, stupid act” and describing it in similar language several other times. But he used the concept of maturity to clarify that he was repentant in spite of his failure to grasp his crime: “I still cannot give a single sensible reason for what I did. It remains for me the completely motiveless act of a socially and emotionally immature boy; but I can assure you that remorse has been the daily companion of the man who grew out of that boy.” As reinforcement for this claim, he described his activities in prison as acts of atonement; being unable to change his past, he found solace by trying to translate his pain into action, helping others to lessen his own emotional burden. In concluding, Leopold claimed he had hesitated to proclaim his remorse too assertively in the past for fear that he would be accused of simply telling people what he thought they wanted to hear. But he made it clear that he intended to continue, in or out of prison, to live out the rest of his life serving penance for his crime through service to his fellows.<sup>32</sup> Leopold would continue to refine and disseminate this interpretation of his remorse throughout his campaign for parole.

The biggest change in Leopold’s strategy following the 1953 hearing was that, throughout the next five years, Leopold and his representatives became increasingly invested in publicity, culminating with the six months leading up his final, successful parole hearing in February 1958. The board was extremely sensitive to the press attention it received, particularly over an issue as controversial as a parole for possibly the most notorious inmate in the country. Leopold and his allies accordingly decided that his best hope was an aggressive reformation of his image, which would allow him to mobilize public opinion in his favor. Leopold mounted meticulous

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<sup>32</sup> NL to Parole Board, 8 May 1953, LLC at NWU, box 3, folder 13, p. 2.



formal cases in 1957 and 1958, first to convince the board to reopen his case in 1957, and then to convince it to grant his parole at his 1958 rehearing. But the most important advances in his parole campaign may have been in generating and presenting evidence that the public favored his release. Leopold had also, by 1953, decided on the best way to reform his image. A few months after the disastrous 1953 hearing, he wrote to a friend:

I have been thinking a good deal of the Dreyfus case in France at the turn of the century and of the case of Moody in California...In both these cases, the men involved or their cases became symbols of a moral or social question...The question arises whether my case can be identified with any broad, general principle. I believe it can. I think my case can be made symbolic of the whole question of rehabilitation versus revenge in penology.<sup>33</sup>

Parole was a contentious issue in postwar America. It pertained directly to public and penological debates about the proper places of punishment and rehabilitation in the American prison system and the success of progressive prison initiatives. Leopold was well acquainted with many of the leading academic authorities on criminology and penology, but for his strategy with the normality narrative to be successful, he needed to learn to engage popular perceptions as well. Historian David Rothman argues that from roughly 1900-1965, the American legal system embraced and attempted to implement therapeutic approaches towards criminals and juvenile delinquents. Orienting itself to finding the causes of crimes rather than assigning blame for them, the legal system began to refute nineteenth-century prisons' and asylums' emphasis on punishment and develop an adjudicatory framework based on treatment. Practices such as indeterminate sentencing, parole, and probation arose in the early twentieth century out of the belief that professionals,

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<sup>33</sup> NL to Samuel Goldfarb, 10 July 1953, LLC at NWU, box 23, folder 1, p.2.

enlightened and properly trained, could be trusted to determine and execute the best course of action for each individual subject. The reality of implementation, however – inadequate training for personnel, insufficient resources for prison and parole administrators, and the use of parole to relieve overcrowding, among other things – created a system very different from the progressive vision. Parole, being the proverbial “last stop” in the process, became a focal point for public anger at the criminal justice system as a whole.<sup>34</sup>

A parole for Leopold could, depending on how the public perceived it, be a symbol for either the practice’s fundamental flaws or its ability to redeem even the most egregious criminal. The public dissatisfaction with parole was compounded in Leopold’s case by the Franks murder’s continuing status as a prompt for singular outrage, and by the perception that Leopold had escaped justice once already when he avoided the death penalty in 1924. Leopold’s release could thereby be made significant of the parole system’s fundamental objectionability.<sup>35</sup> But an essential element of the arguments in Leopold’s favor was that the reverse could also be true: if a man still famous for having committed what many people considered a uniquely coldhearted crime could reenter society as a productive, moral member, then he would establish parole’s ultimate virtue as an institution. He could be an icon for the principle that no one was beyond redemption.

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<sup>34</sup> David Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. Rev. ed. (New York: Aldine de Gruyter, 1980, 2002), 171.

<sup>35</sup> State’s Attorney John Gutknecht, who spearheaded the legal opposition to Leopold’s parole, went on television in January 1953. He acknowledged that Leopold was rehabilitated and was not at risk to commit another crime, but maintained that Leopold’s power as a symbol made it imperative that he remain in prison for the rest of his life. Otherwise, future judges would be reluctant to sentence convicts to life in imprisonment rather than execution, for fear that the defendant would one day be released. Leopold, *Life Plus 99 Years*, 360.

Leopold and some of his supporters even inverted the arguments that he could not be released because of his crime's continuing notoriety. His supporters argued that he so exemplified rehabilitation, and was so clearly a more worthy candidate than other, less famous convicts who received parole, that keeping him in prison undermined the principles upon which the penal system was supposed to operate. Leopold, for his part, complained of the unfairness that the prominence of his name subjected him to harsher punishments than people who had committed similar but less well-known crimes. And he professed exasperated resignation at the inevitability of the media's attention even as he tried to manipulate that attention to his own benefit.<sup>36</sup>

#### THE BURDEN OF PROOF – SAME-SEX SEXUALITY AND THE SEXUAL PSYCHOPATH PANIC

Solely in terms of his record as an inmate, Leopold exemplified a good parole risk; he claimed that a psychiatric evaluation for the parole board in 1948 had given him a 97 percent chance of succeeding on parole, putting him in the highest tier of candidates.<sup>37</sup> Whether that assertion is true or not, no one could dispute that Leopold's prison record was impressive. He had been subject to very few disciplinary actions during the whole of his incarceration, none of them for severe infractions.<sup>38</sup> His history of service and achievement was more exceptional still; Leopold's accomplishments as an inmate were undeniable, perhaps unique, and he used them

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<sup>36</sup> In a draft of his request for a reduction of his sentence, for example, Leopold specifically pleaded with the Parole Board not to be dissuaded from approving his application by the fear of bad publicity, and provided a list of precedents indicating he had already served more time than would be usual for another convict; NL, Annotated Request for Sentence Reduction, 8 Aug. 1957, LLC at NWU, box 3, folder 13, p. 10.

<sup>37</sup> Nathan Leopold, "Leopold Begins his Long Quest for Freedom," *Chicago Daily News*, 23 Nov. 1957.

<sup>38</sup> NL, Annotated Draft of Request for Rehearing, "NL to Parole Board," 8 Aug. 1957, LLC at NWU, box 3, folder 13, p. 8.

more than any other element of his life or his personality to substantiate his rehabilitation. He connected the normality narrative's claims of personality development with the quantifiable facts of his actions, and thereby made the development itself seem somewhat quantifiable.

The specter of perversion, however, lingered over his crime, unestablished in any legal forum but nonetheless strong enough to subject him to the postwar antipathy towards the sexual psychopath and mar his efforts to portray himself as a "normal," moral, law-abiding man. Numerous newspaper articles, editorials, and letters to the editor showed that the miasma of open sensationalism, speculation, factual inaccuracy, and assumption about the role of sexuality in the murder was still embedded in the case in the 1950s. A syndicated editorial from July 1957 asserted that "Leopold and Richard Loeb in 1924 murdered a 14-year-old boy to prevent him from informing on their homosexual practices with him."<sup>39</sup> Some pieces took a more passive approach, focusing on the sexual aspects of Leopold and Loeb's relationship to hint that the crime was sexual regardless of whether or not Bobby Franks had been molested. Many alluded to either Leopold and/or Loeb as having homosexual proclivities without elaborating on those proclivities' relevance for the Franks murder or Leopold's parole.<sup>40</sup>

Characterizations of Leopold and Loeb as homosexual were not just provocative but extraneous details. They invoked the psychiatric and popular perceptions of homosexuality to imply that Leopold and Loeb were, as perverts,

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<sup>39</sup> The above quotation is from "Parole for Leopold," *Patterson Evening News*, 31 July 1957. For its counterparts with similar or identical wording, see "No Parole for Leopold," Boone [Ia.] *Republican*, 1 Aug. 1957, and "Leopold Again Seeks Parole," *Wilson [N.C.] Times*, 18 July 1957.

<sup>40</sup> Examples: *Fairmont [Minn.] Daily Sentinel*, 2 Aug. 1957. Paradox of Parole," *Mt. Vernon [Oh.] News*, 3 Aug. 1957, Jim Mack, Letter to the Editor, *St Louis Globe*, 11 July 1957.

compelled to kill. Historian George Chauncey argues that the domestic consensus's emphasis on conformity to a very narrow model of normality, the national press, and the psycho-sexual thought of the time all combined to encourage the frequent conflation of same-sex acts performed by consenting adults with forceful acts of sexual predation.<sup>41</sup> The open association of Leopold and Loeb with sexual psychopathy that surged after Loeb's death in 1936 was still in force in the late 1940s and 1950s, when the country underwent a renewed sexual psychopath scare. In this new scare, the antipathy towards homosexuality as a form of psychopathy was even more pronounced, so Leopold's sexual relationship with Loeb was more damaging to his image.

In the 1930s, psychoanalysts, gaining influence in the psychiatric profession as a prelude to their gains during World War II, began to shape psychiatric discussions of homosexuality by rejecting physiological explanations for homosexuality and focusing instead on environmental factors and personality development. By the mid-1940s, most scientific thought on homosexuality had adopted the precept that it could not be detected through physical indicators, making psychological insights all the more important.<sup>42</sup> Historian Jennifer Terry argues that in the 1930s and 1940s, "by proclaiming it [homosexuality] as a form of maladjustment and offering themselves as suitable experts to prevent this problem, psychiatrists...became the principal purveyors of mainstream knowledge about homosexuality."<sup>43</sup>

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<sup>41</sup> Chauncey, "The Postwar Sex Crime Panic."

<sup>42</sup> Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago: U of Chicago P, 1999), 290-298.

<sup>43</sup> Terry, 264.

The new visibility of homosexuality in the postwar era made many Americans all the more eager for knowledge about it, especially once they came to perceive the behavior itself as threatening. Terry characterizes homosexuality as a “national obsession” in the 1950s, one borne out of a combination of psychiatric thought, surprising new discoveries about American sexual behavior, and postwar culture.<sup>44</sup> World War II had been, as historians John D’Emilio and Estelle Freedman called it, “something of a nationwide ‘coming out’ experience.” The war had relocated millions of men and women for military service or employment opportunities and placed them in same-sex environments, which “created substantially new erotic opportunities that promoted the articulation of a gay identity and the rapid growth of a gay subculture.”<sup>45</sup> Then, in 1948, biologist Alfred Kinsey’s study, *Sexual Behavior in the Human Male*, revealed that, contrary to the popular perception that homosexuals were a small minority among the male population, same-sex activities among men were extremely common. Moreover, Kinsey argued that same-sex activities among men were common enough, and sexual activities existed on the sort of spectrum, that the very idea of “homosexuals” as a specific group existing in a binary with “heterosexuals” was faulty. All of the laws and social stigma targeting homosexuals were therefore punishing individual people because of popular misconceptions about a group that did not exist.<sup>46</sup>

Kinsey’s revelations produced a sensation, especially his revelations about homosexuality. Many Americans found homosexuality more threatening for its

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<sup>44</sup> Terry, 6.

<sup>45</sup> John D’Emilio and Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper & Row, 1988), 289.

<sup>46</sup> Alfred Kinsey, Wardell Pomeroy, and Clyde Martin, “Homosexual Outlet,” *Sexual Behavior in the Human Male* (Philadelphia: WB Saunders, 1948), 610-666.

commonality, not less. They began to see homosexuals as a clandestine threat that permeated every walk of American life: “the news about homosexuality alarmed those of Kinsey’s readers who were unsettled by the prospect that perverts were all around—in the neighborhoods, teaching in their children’s schools, playing golf at their country clubs, singing in their church choirs, and perhaps even making policy at the highest levels of government.”<sup>47</sup> Kinsey’s statistics indicating that homosexuality was more widespread than previously thought made it seem more dangerous, and cause for a stronger public and professional response rather than greater tolerance. His findings that so many sexual activities were going on unnoticed combined with Cold War fears of internal subversion, contributing to a general atmosphere of homophobia and the fear of innumerable threatening individuals hiding in plain sight. He thus wound up inadvertently contributing to the framework for a moral panic about homosexuality in the United States.<sup>48</sup>

Psychoanalytic psychiatrists, one of the most respected and influential groups in postwar society, were disproportionately represented among Kinsey’s harshest critics. Freud himself had advocated a tolerant public stance towards homosexuality, and had expressed skepticism that it could be cured. But postwar psychoanalysts embraced the idea that heterosexuality was the norm, and homosexuality a pathology, though they differed on whether homosexuality was curable. Some psychoanalysts thought that homosexuals would have a natural tendency to pursue young victims,

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<sup>47</sup> Terry, 301.

<sup>48</sup> Terry, 323-324. For a fuller discussion of homophobia’s relationship with anti-communism in the postwar era, see David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago: U Of Chicago P, 2004). Colleen Logan has convincingly argued that the word “homophobia” often more aptly describes anti-homosexual attitudes in American than “homophobia.” Colleen Logan, “Homophobia? No, Homophobia,” *Journal of Homosexuality* 31, no. 3 (1999) pp. 31-53.

either because the young were vulnerable targets for homosexuals' irresistible impulses, or because the psychosexual immaturity that made them homosexual also inclined them towards young partners.<sup>49</sup>

The supposed pathology that homosexuality represented became intertwined with the sexual psychopath scare, so that "by 1950," historian Stephen Robertson argues, "the media had begun to split homosexual offenders away from pedophiles, and to present them as a problem in their own right."<sup>50</sup> The press furthered the association of homosexuality with predation by using the term "sex deviate" to describe all forms of sexual nonconformity, categorizing the activities of consenting adults with those of sexual predators.<sup>51</sup> Many of the state laws targeting sexual deviance, meanwhile, also encouraged the perception that same-sex sexuality was inherently threatening. In New Jersey, for example, most rapists were treated as "normal" criminals, while homosexuals were classified as sexual psychopaths alongside pedophiles, because sexuality was supposed to be more central to the homosexual's antisocial tendencies than to that of a man who raped adult women.<sup>52</sup> The high percentage of men arrested under sexual psychopath laws for consensual adult activities furthered these perceptions of a connection between homosexuality

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<sup>49</sup> Terry, 304-308, 322.

<sup>50</sup> Stephen Robertson, "Separating the Men from the Boys: Masculinity, Psychosexual Development, and Sex Crime in the United States, 1930s-1960s," *Journal of the History of Medicine and Allied Sciences* 56, no. 1 (Jan. 2001): 21.

<sup>51</sup> Chauncey, "Postwar Sex Crime Panic," 167-168, 170.

<sup>52</sup> Simon Cole, "From the Sexual Psychopath Statute to 'Megan's Law': Psychiatric Knowledge in the Diagnosis, Treatment, and Adjudication of Sex Criminals in New Jersey, 1949-1999," *Journal of the History of Medicine and Allied Sciences* 55, no. 3 (July 2000): 298-299.



and violent criminal tendencies while simultaneously inflating statistics on the incidence of “sexual crimes.”<sup>53</sup>

These discoveries created a very tense situation for Leopold. The belief that he was a sexual psychopath was the primary basis for concerns that he could commit another murder, and the argument that Leopold’s parole was not worth the risk of another murder was a mainstay of the arguments against his release. In 1957, an editorial in the *Springfield Sun* in Ohio argued that prison had protected Leopold from any temptation he felt to murder young boys, so no matter how apparent his rehabilitation might seem from looking his prison record, no one could know if he had overcome those tendencies.<sup>54</sup> Other newspapers emphasized what was at stake in testing fate; several editorials invoked the recent case of a parolee in Massachusetts who killed two boys shortly after his release. They cited the case ostensibly as evidence of public opposition to parole and probation programs, but it also directed the public’s moral outrage at such crimes towards Leopold’s release, and clustered him with a recidivistic sexual psychopath who should not have been paroled.<sup>55</sup> Even sympathetic editorials did not necessarily favor his release. The *Sioux Falls Argus-Leader* argued that offenders whom “nature” had “afflicted” with uncontrollable impulses – like Leopold – should not be blamed for the impulses they could not help, but must remain incarcerated for society’s protection.<sup>56</sup>

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<sup>53</sup> Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven: Yale UP, 1998), 58; Terry, 322-323.

<sup>54</sup> “A Thrill-Killer’s Appeal,” *Springfield [Ohio] Sun*, 3 Aug 1957.

<sup>55</sup> “Leopold Denied Freedom,” *Scranton, Pa. Times*, 31 July 1957; *Paradox of Parole*, *Mt. Vernon, Ohio News*, 3 Aug. 1957; Enid, Okla. *Daily Eagle*, 5 Aug 1957; “When Mercy Goes Wrong,” *Philadelphia Bulletin*, 1 Aug. 1957.

<sup>56</sup> “Odd Human Quirks in Leopold Case,” *Sioux Falls Argus-Leader*, 1 Aug. 1957.

Therefore, any narrative that Leopold put forth as evidence that he merited parole would only be convincing if it had sexuality as an integral element. Leopold needed to prove not only that the Franks murder itself was not a sexual crime, but also to establish that his relationship with Loeb did not fit the popular typology of the sexual psychopath. He accordingly sought to use the normality narrative to demonstrate that he was not homosexual as well as not homicidal. To do so, he needed to reconcile his present-day presentation of himself with the activities, both criminal and sexual, which he had admitted committing in his youth.

#### LEOPOLD AND THE POSTWAR JUVENILE DELINQUENCY PANIC

The key to doing so, ironically, lay in public and professional perceptions of the source of another, related social panic in the 1950s: the juvenile delinquent. Numerous books exploring the psychological and environmental causes of delinquency, as well as possible avenues of treating or curing delinquents, came out in the 1940s and especially the 1950s. Popular magazines emphasized the problem to the lay reader, stressing the phenomenon's manifestation in the form of random violence and thrill killings that evoked the legacy of the Franks murder. And in 1953, the Senate initiated the Subcommittee to Investigate Juvenile Delinquency.<sup>57</sup>

In public discussions, the delinquent, compared to the sexual psychopath, was more threatening as a symbol of social entropy than immediate harm. The sexual psychopath was a rogue who physically preyed on the members of the normal, moral society of which he could never truly be a part. The delinquent challenged the integrity of the family and society from within, with the possibility that society itself

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<sup>57</sup> James Gilbert, in *A Cycle of Outrage: America's Reaction to the Juvenile Delinquent in the 1950s* (New York: Oxford UP, 1986), 24-41, 63-78, 143-161.

was a brutalizing force that overwhelmed parental influence and corrupted the young. New or newly prevalent facets of youth culture in America – including teenaged peer-group (rather than familial) social activities and teen-oriented media and consumer markets – brought adolescents into unprecedented public prominence in American culture. Youth culture's new orientation outside the home seemed to undermine the insular integrity of home and family – which the domestic consensus held were the most important bastions of American society – and leave adolescents the family members most exposed to the debilitating psychological effects of the postwar environment. If postwar culture caused criminality, then, adolescent criminals could be early indicators that lawlessness and anomie would eventually become epidemics not restricted to any one demographic.<sup>58</sup>

Studies of delinquency generally advocated for prevention and rehabilitation rather than condemnation and punishment, reflecting both the postwar faith in psychiatry and the delinquency panic's roots in postwar cultural anxiety. Scholarly works of the time tended to analyze the problem as one that required further research for early detection and treatment as well as prevention, expressing faith in delinquent reform. Magazine articles, while they often used anecdotal evidence to sensationalize the problem, still approached it as a social issue that required a social response.<sup>59</sup> The federal government, especially, embraced progressive approaches, through bodies like the Senate Subcommittee, the Children's Bureau, and the National Institute of Mental Health. In the juvenile delinquent, then, Leopold found a social construction that carried far less of a stigma than that attached to the sexual psychopath, provided

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<sup>58</sup> Gilbert, chapter 4, "The Great Fear," 63-78.

<sup>59</sup> "All Our Children," *Newsweek* 42, no. 19, (9 Nov. 1953), 28-30.

him with guidance as to how to structure a convincing story of his rehabilitation, and to which his case already seemed readily applicable. It fell to him to shape those applications to their greatest effect.<sup>60</sup>

By portraying the Franks murder as a youthful act committed by a still developing mind, Leopold was able to assert that he had outgrown the psychological maladjustments that led him to participate in the Franks murder. The normality narrative was, in that sense, simply the story of a normal, moral personality that matured relatively late in life, in prison. In conceptualizing his crime this way, Leopold could claim to accept responsibility for his past actions while simultaneously lessening their taint on his adult personality. His actions in 1924 were not representative of his adult mind, he maintained, but rather those of a youngster who lacked the moral sense that he had since acquired. Leopold could use this interpretation to classify anything about his life before he went to prison that might otherwise weigh against his parole as an anachronism, something attributable to an erstwhile self whose actions he had to live with as an adult even though they now seemed foreign to him.

This view of Leopold's crime and personality gained traction with the public because it was mutually beneficial for both Leopold and the people who believed him. It benefited Leopold because it supported his release. It meant that further incarceration would do no good in a punitive sense and that, since Leopold was now safe to reenter society, his continued detention was not a necessary precaution to

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<sup>60</sup> Jason Barnosky, "The Violent Years: Responses to Juvenile Crime in the 1950s and the 1990s," Ph.D Diss., Brown University, 2004.

protect the public. It appealed to the public by offering up a story that, if believed, alleviated some of the anxiety about juvenile crime.

In 1924, the Franks murder case had triggered a panic because it seemed so horrifyingly new, and people feared that Leopold and Loeb would prove to be only the first members of an entire generation of thrill-killers. In the 1940s and 1950s, it began to appear as if the case's terrifying potential was approaching fruition. Erle Stanley Gardner devoted much of his introduction to *Life Plus 99 Years* to characterizing the Leopold-Loeb case and postwar delinquency as parts of the same continuing social crisis. He declared the case "merely the first shocking symptom of a change which was destined to sweep the country," and one that should no longer be treated as special: "juvenile murderers were considered fiends incarnate in 1924. They were a puzzling problem in 1952. They have ceased to be a novelty in 1957." Leopold and Loeb were the proverbial patients zero for this epidemic, and as such potentially invaluable case studies for understanding the contemporary problem.<sup>61</sup>

#### "MURDER ON HIS CONSCIENCE" – THE MATURATION OF THE NORMALITY NARRATIVE

Leopold hated discussing any events that preceded the personal transformation that began with his arrival in prison, preferring always to present himself in the most flattering light possible. In particular, he refused throughout his entire life to discuss the Franks murder. He defended his silence on the subject by professing his belief that his actions spoke louder than his words ever could. It was a somewhat plausible explanation for avoiding the evocation of grisly details that would have reminded readers why Leopold was in prison in the first place. But it also

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<sup>61</sup> Erle Stanley Gardner, Introduction to Leopold, *Life Plus 99 Years*, 9,10.

restricted how he could disseminate the normality narrative and with whom, as progressive journalist John Bartlow Martin discovered.

Leopold's collaboration with Martin was one of the critical steps in the former's use of the media to disseminate the normality narrative in order to advance his parole interests. In 1955, while Leopold was searching for a publisher and/or coauthor for his prison memoir, *Life Plus 99 Years*, he worked with Martin on a four-part series of articles for the *Saturday Evening Post* collectively titled "Murder on his Conscience."<sup>62</sup> Martin had the exclusive byline in the finished product, but early in their negotiations, he and Leopold considered writing the piece in the first person, with authorship going to Nathan Leopold as told to John Martin.<sup>63</sup> Instead, Leopold was essentially the ghost co-writer. Martin did much outside research and interviewed many people for the story, but his access to Leopold was the feature's driving force. Leopold granted Martin 30-40 hours of interviews over the space of several weeks and access to the manuscript for *Life Plus 99 Years*, which collectively shaped most of the series. In return, Martin granted Leopold and his family editorial input, although before the collaboration was over they clashed over precisely how much control Leopold was entitled to.<sup>64</sup>

Leopold thought Martin had violated their agreement by including too much material on the crime and not giving Leopold sufficient editorial input. He began to

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<sup>62</sup> John Bartlow Martin, "Nathan Leopold's Desperate Years: Murder on his Conscience," part I, *Saturday Evening Post* 227, no. 40 (2 Apr. 1955), 17-19, 86-88, 90; part II, *Saturday Evening Post* 227, no. 41 (9 April 1955), 32-35, 65, 68, 71-72; part III, *Saturday Evening Post* 227, no. 42 (16 Apr. 1955), 36, 198, 201-202; part IV, *Saturday Evening Post* 227, no. 43 (23 Apr. 1955), 28, 135-138.

<sup>63</sup> The Papers of John Bartlow Martin at the Library of Congress (JBM at LOC), box 148, folder 12.

<sup>64</sup> Martin granted Leopold the right to correct matters of fact and to offer input on matters of interpretation. Leopold complained that he did not have sufficient time to read the manuscript nor time with Martin to discuss those matters. However, Martin's papers at the Library of Congress document much back and forth over content between Martin, Leopold, and the Leopold family. The Papers of John Bartlow Martin at the Library of Congress, box 148, folder 12.

ease in his opposition only after friends and advisors assured him the series would be helpful.<sup>65</sup> In actuality, the finished series's interpretations were extremely favorable to Leopold. But for the first installment's discussion of the events of 1924, the piece reads much like a third-person version of Leopold's prison memoir, finally published three years later. Martin's support for Leopold's parole was so open in early drafts of the piece that his editors at the *SEP* made him tone down his position, and he went on to testify for Leopold at the latter's 1958 parole hearing,<sup>66</sup>

Later in 1955, Leopold and Martin's plans to collaborate on a book fell through over Leopold's insistence that it focus exclusively on his activities in prison. At one point, Martin forwarded to Leopold all of the rejection letters he and his agent had received from publishers who insisted that Leopold go into the "full story," a euphemism for divulging the details of the Franks murder. Martin assured Leopold that a discussion of the crime would not hurt his parole chances, but Leopold remained resolute.<sup>67</sup> One publisher from McGraw-Hill said that the editorial board had voted to reject the project on the basis that the book would "present only one-half the picture..., and that the book would certainly have strong elements of special pleading since Leopold must regard it as simply another weapon in his fight for parole." Martin and Leopold abandoned the project.<sup>68</sup>

Something similar happened two years later, when a brief mention in a popular magazine that Leopold had written an autobiography (which Leopold had shelved while working with Martin) prompted letters of interest from every major

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<sup>65</sup> NL to RN, 16 Jan 1955, NFL at CHM, box 34, folder 23.

<sup>66</sup> Stuart Rose to JBM, 18 Oct. 1954, JBM at LOC, box 148, folder 12. Martin's testimony can be found in LLC at NWU, box 3, folder 6.

<sup>67</sup> JBM to NL, 15 Feb. 1955, NFL at CHM, box 34, folder 15.

<sup>68</sup> Ed Kuhn, quoted in Ivan Von Auw, to JBM, 11 Feb. 1955, NFL at CHM, box 34, folder 15, p. 2.

commercial publishing house in the United States. Interest quickly subsided because of Leopold's refusal to tell the "full story."<sup>69</sup> Leopold had already been sitting on the book for around two and a half years by that point. He had first raised the possibility of the book in September 1952, one month after the Erickson series in the *American*, and completed his first draft by February 1954, after which he spent two years trying unsuccessfully to find a coauthor or a publisher who was willing to abide by his adamant refusal to discuss the Franks murder.<sup>70</sup> When Leopold finally sold the rights to *Life Plus 99 Years* to Doubleday in November 1957, it was only with an editor's assurance that "we are and will be willing to forego the possibility of certain profits in order to help you."<sup>71</sup> Leopold and Doubleday compromised on the book's scope: he added five chapters, so that it began immediately after he and Loeb disposed of Bobby Franks's body and included the time between the murder and his arrest, as well as his sentencing hearing. The book had originally opened with his first day serving his prison sentence.<sup>72</sup>

*Life Plus 99 Years* was Leopold's most direct attempt to manipulate his public image. Aside from Doubleday's limited editorial input and crime writer/novelist Erle Stanley Gardner's introduction, the content of the book was Leopold's alone. It was Leopold's least adulterated, most comprehensive expression of how he wanted people to perceive him, his ideal version of the normality narrative, whose principles he had

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<sup>69</sup> The magazine article was "Nathan Leopold, of the Celebrated Leopold-Loeb case, is Seen and Heard after 32 Years in Prison," *Life* 42, no. 9 (4 Mar. 1957), 69. The correspondence from publishers can be found in NFL at CHM, box 43, folder 3.

<sup>70</sup> NL to Foreman Lebold, 10 Sep. 1952, NFL at CHM, box 1, folder 9; NL to Ralph Newman, 21 Feb 1954, NFL at CHM, box 34, folder 23.

<sup>71</sup> Tim Seldes to NL, 9 Sep. 1957, NFL at CHM, box 28, folder 1, p. 1.

<sup>72</sup> Parole Board Stenographic Report, 5 Feb. 1958, p. 21, LLC at NWU, box 3, folder 6; the serialization had been released by this point, in November, 1957.



mostly decided upon by early 1954 at the latest, and whose publication came only one week before he was released from prison.<sup>73</sup>

When Leopold sent a letter to his brother Foreman on September 10, 1952, soliciting Foreman's approval for the project (Foreman had been the family patriarch since Nathan Leopold Sr.'s death), Leopold attributed the initial idea for the book to a family friend, Rabbi Louis Binstock.<sup>74</sup> According to Leopold, Binstock had encouraged the book on the basis that it might have social utility, especially for understanding contemporary youth issues. Binstock also thought the book might benefit Leopold personally, helping his chances at a later hearing if the one coming up in January went against him.<sup>75</sup> And it was Binstock's suggestion that Leopold avoid discussing his crime and instead keep the book limited to his time in prison.<sup>76</sup>

Leopold promised to abide by Foreman's decision, but geared the letter towards overcoming Foreman's aversion to publicity. Leopold admitted that the book would capitalize on his notoriety, and that his motives were largely financial. He did not know the details of the family trust for his welfare, and was eager for the chance to secure an independent source of income. But he promised that his book would not substantially increase the prominence of the case in the media nor cause further damage to himself or the family. Moreover, he continued, "what I added to the total [of publicity] WOULD BE VERY CAREFULLY CALCULATED TO BE

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<sup>73</sup> The book was released on March 6, 1958. Leopold left Stateville on March 13. Harold Whitford, *Review of Life Plus, 99 Years*, *Library Journal* 83, no. 6 (15 Mar. 1958), 840; Higdon, 321.

<sup>74</sup> It is possible that in assigning so much of the book's conceptualization to Binstock, Leopold hoped to offset some of Foreman's resistance by emphasizing the ideas as having come from a respected third party.

<sup>75</sup> Neither Binstock nor Leopold could have foreseen Leopold getting a 12-year continuance in January, as opposed to the more customary 12 months, but Leopold still implemented the principle of publishing a book to help his parole chances, albeit on a longer timeline than Binstock envisioned.

<sup>76</sup> NL to Foreman Lebold, 10 Sep. 1952, NFL at CHM, box 1, folder 9

HELPFUL...It would definitely NOT be conceited or self-praising -- it would very carefully be kept general, objective, descriptive” (emphasis Leopold’s).<sup>77</sup> Judging by his promises, Leopold was optimistic about the book, and felt his family could be as well, because he saw no contradiction in the idea of a book that was simultaneously objective and engineered to benefit him.

In the book, as in every other forum, he discussed Bobby Franks’s murder only in very general remarks about how remorseful he was as an adult, and even then, the emphasis was on how Leopold felt *years after* the murder. He used the horror that he felt after he had grown up emotionally to distinguish himself from the 19-year-old Leopold who had killed Franks: “looking back from the vantage point of today, I cannot understand how my mind worked then. For I can recall no feeling then of remorse. Remorse did not come until later, much later...since then...remorse has been my constant companion.”<sup>78</sup>

In other sources, Leopold was not always consistent as to when exactly that remorse set in. He usually attributed it to 1929, when his father died, and/or saying that it became a permanent fact of his personality around 1934.<sup>79</sup> When confronted in a 1960 civil deposition, he invoked the nebulousness of emotions to explain the

<sup>77</sup> NL to Foreman Lebold, 10 Sep. 1952, NFL at CHM, box 1, folder 9, p. 3, emphasis Leopold’s.

<sup>78</sup> Leopold, *Life Plus 99 Years*, 33.

<sup>79</sup> In his May 1953 letter to the Parole Board, Leopold wrote that he had been riddled with grief every single day since 1929 for what he what he had done to Bobby Franks, as well as his own and the Franks families. He said something similar at his February 8, 1958 parole hearing. In *Life Plus 99 Years*, he wrote that remorse for the Franks murder began to set in after he had been in prison for “several years;” and that he thought the death of his father in 1929 had served as its catalyst, but that remorse did not reach its “full flood” until he had spent about a decade in prison. In the *Martin Post* series, he claimed that his father’s death brought the full weight of the crime down upon him, as he realized how unhappy he had made his father’s final years; the article then goes on to describe Leopold’s transformation into a model prisoner between 1930 and 1936; NL to Parole Board, 8 May 1953, LLC at NWU, box 3, folder 13; “Parole Board Stenographic Report,” 5 Feb. 1958, LLC at NWU, box 3, folder 6, p. 5-6. Leopold, *Life Plus 99 Years*, 33, 239, 33; John Bartlow Martin, “Nathan Leopold’s Desperate Years: Murder on his Conscience,” part II, *The Saturday Evening Post* 227, no. 41 (9 Apr. 1955), 32-35, 65, 68, 71-72.

apparent inconsistency, but made it clear that “true continuous remorse” set in approximately 10 years after he went to prison.<sup>80</sup> It was a plausible explanation for all his assertions of remorse save those in his 1953 letter to the parole board, where he was definitive that his remorse since 1929 was continuous. But whatever their chronology, Leopold’s professions of remorse, and his acceptances of responsibility, were generally similar throughout the 1950s, sometimes almost to the point of rote recitation.<sup>81</sup> The essential point, to which Leopold returned whenever he spoke on the subject, was that he had grown up both emotionally and psychologically, and learned the error of his ways.

#### CHARACTERIZATIONS OF LEOPOLD AND LOEB’S RELATIONSHIP IN THE NORMALITY NARRATIVE

Leopold was more consistent in his characterizations of his relationship with Loeb. In 1953, one of the things that hurt Leopold’s testimony, even in the supplemental letter to the parole board he hoped would mitigate the damage, was his inability to explain why he had participated in the Franks murder. But, though he would not discuss his crime, he needed an explanation for why he committed it in order to argue that he would not commit a similar crime again. By 1955, when he worked with Martin on the *Saturday Evening Post* series, Leopold had found his answer: although *he* was not a psychopath, *Loeb* was, and Leopold had felt no moral qualms about abetting Loeb because, in Martin’s words, “for reasons rooted in his

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<sup>80</sup> “Leopold V. Levin et al, Cook County no. 59 C 14087 - Plaintiff’s Deposition, Abstract, 1960,” vol. I, Robert W. Bergstrom Papers, Midwest Manuscript Collection, Newberry Library, Chicago; box 6, folder 33, p. 59; NL to Parole Board, 8 May 1953, LLC at NWU, box 3, folder 13.

<sup>81</sup> For example, Leopold’s statement from *Life Plus 99 Years* about his inability to understand his younger self echoes very similarly his 1953 letter to the parole board. He also recycled from that letter the point that he tried to demonstrate his remorse through good deeds rather than words. Leopold, *Life Plus 99 Years*, 241; NL to Parole Board, 8 May 1953, LLC at NWU, box 3, folder 13.

own inadequate emotional development, Leopold deeply needed Loeb.”<sup>82</sup> Like Martin, Leopold avoided the word “love” when describing his feelings for Loeb, preferring words like “admired.”

Harking back to the alienists’ assessment in 1924, and towards the dominant perceptions of the crime in the wake of the alienists’ work, Leopold described himself as without innate criminality, but propelled by his own emotional problems towards accedence to Loeb’s inherent criminal tendencies. In 1924, Leopold had acknowledged a “blind hero-worship” of Loeb, saying “I almost completely identified with myself with him.”<sup>83</sup> In the 1950s, he crafted that assertion into exculpatory evidence.

Although Leopold’s dependence on Loeb had been an aspect of the case since the 1924, Leopold’s use of that dependence in the 1950s had important difference from the way the public or the alienists had seen it in the months after his arrest three decades earlier. The defense alienists had seen a deep-seated and incurable pathology in Leopold. Whether Leopold had a *compulsion* to commit crime or not, his *willingness* to do so, and his lack of remorse about it, were indicative of a severely antisocial personality. Nor, according to the alienists, had Leopold been solely an accomplice to Loeb in the crime. The Franks murder, in their estimations, was a result of the coming of together of the two teenagers’ complementarily dysfunctional

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<sup>82</sup> Martin, “Murder on his Conscience,” part I, p. 86. Martin was probably responsible for the blunt assertion on page 87 that Loeb was a psychopath; Leopold rarely invoked psychiatric arguments directly. However, Leopold – just as he did not openly call himself a paragon of rehabilitation, but worked to maintain an image as such – described Loeb in a manner consistent with such characterizations in other sources. And Leopold might have been more willing to implicate Loeb in a piece like this, where it would not be clear that it was him making the implication.

<sup>83</sup> Harold Hulbert and Karl Bowman, “Medical Report,” in Maureen McKernan, *The Amazing Crime and Trial of Leopold and Loeb*, with an introduction by Clarence Darrow and Walter Bachrach, 1996 reprint (Holmes Beach, Fla.: Gaunt Inc, 1924,1996), 121.

personalities.<sup>84</sup> William White asserted that it was impossible to accurately label one participant a leader and one a follower.<sup>85</sup> Leopold wielded significant power in the relationship, and had often helped to propel Loeb forward with their crimes when the latter faltered.<sup>86</sup> The public in 1924 had similarly mixed feelings. It saw much in Leopold to pity, but not nearly enough to wipe away his responsibility for the Franks murder or warrant forgiveness for it. In the 1950s, Leopold sought to erase any ambiguities about his role in the murder. He wanted to show that Loeb was a toxic influence, the singular source of the Franks murder, while Leopold's participation was a product of his own vulnerability.

An interpretation of the crime that pushed blame onto Loeb would be quite conducive to Leopold's parole, provided that Leopold could pair his characterizations of his relationship with Loeb with a convincing story of how Leopold outgrew that relationship. In *Life Plus 99 Years*, Leopold described Loeb as being, despite a streak of genuine kindness, a charismatic psychopath. Leopold wrote that Loeb "wasn't immoral, he was just plain amoral—unmoral, that is. Right and wrong didn't exist. He'd do anything—anything. And it was all a game to him." But Leopold was unable to recognize Loeb's flaws as a young man because Loeb was extremely charming and admiration clouded Leopold's judgment.<sup>87</sup> It was that blind spot, and the inadequate development of Leopold's personality, Leopold maintained, that drew Leopold into the Franks murder. In his August, 1957 application for a parole rehearing, he wrote in

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<sup>84</sup> William A. White, William Healy, Bernard Glueck and Ralph Hamill, "Joint Medical Report by Drs. White, Healy, Glueck, and Hamill," in McKernan, 142.

<sup>85</sup> William White, testimony, *People of the State of Illinois versus Nathan Leopold Jr. and Richard Loeb*, 23 July-10 September 1924, vol. 3, 1386-1387.

<sup>86</sup> Hulbert and Bowman, in McKernan, 97.

<sup>87</sup> Leopold, *Life Plus 99 Years*, 26.

his letter of petition that “the crime was conceived by my codefendant, Richard Loeb, planned by him, and, in the main, carried out by him. I participated at his request. My motive, so far as I can be said to have one, was to comply with his request, because I admired him extravagantly.”<sup>88</sup> *Life Plus 99 Years* contains a very similar passage.<sup>89</sup> In February of 1958, he elaborated to the board:

I had no desire to do this terrible thing. On the contrary, the idea was repugnant to me. For weeks and weeks, until only a day or two before the crime, I was sure we would never go through with it, that it was only something to talk about and plan but never actually carry out. Loeb made sure that we would actually do it. I could not stop him then, it was too late. I could not back out of the plan without being a quitter, and without forfeiting Loeb’s friendship. Hard as it is now for me to understand it, these, at nineteen, seemed more important to me at that time than a young boy’s life. True, Loeb did the actual killing, but that does not exonerate me.<sup>90</sup>

Leopold often qualified his own assertions before the parole board with dubious claims of reluctance to implicate his friend. “It is not an easy thing, even with my liberty possibly at stake, to throw blame on the dead,” he lamented in his August petition to the board, “but I cannot answer Mr. Bookwalter’s question honestly in any other way -- and answer, I feel I must.”<sup>91</sup> In his testimony before the parole board six months later, Leopold’s testimony about Loeb’s greater culpability, and his own reluctance to assign that blame to Loeb, match up with the August letter almost word for word. In both the August and February statements, Leopold also specifically referenced board member John Bookwalter’s question about Leopold’s motive in 1953; Leopold asserted that his feelings for Loeb were the only answer he could provide. Clearly Leopold’s failure to adequately answer the question had haunted him

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<sup>88</sup> NL, Letter in Petition of Rehearing, annotated: 8 Aug. 1957, LLC at NWU, box 2, folder 6. p. 2.

<sup>89</sup> Leopold, *Life Plus 99 Years*, 169.

<sup>90</sup> Leopold, quoted in Gertz, *HOC*, 99.

<sup>91</sup> NL, Letter in Petition of Rehearing, annotated: 8 Aug. 1957, LLC at NWU, box 2, folder 6. p. 2.

since Bookwalter first asked it, and he was hoping that he had finally found an adequate response.<sup>92</sup>

In spite of his self-proclaimed reluctance to “push blame on a man that is dead,” Leopold was always eager to minimize his role in the Franks murder in comparison to Loeb’s.<sup>93</sup> He still refused to discuss the specific details of the murder – beyond statements that Loeb did the actual strangling – but he referred to the act in terms that elided his own role. In the August petition, Leopold acknowledged his guilt for the crime on the basis that “under Illinois law, an accessory...is as guilty as the principal,” conveniently putting himself in the role of accessory and Loeb in that of principle without regard for the fact that the legal history of his case justified no such characterization.<sup>94</sup> In the *Saturday Evening Post* series with John Martin, he said of the murder, “here was something I’d been present at,” an appalling evasion that seemed incompatible with a full and earnest acceptance of responsibility.<sup>95</sup> Nor did Loeb get to share in Leopold’s odyssey of personal growth in prison. Although Loeb had worked alongside Leopold on many of the projects Leopold pursued in prison and tied to his own rehabilitation, Leopold wrote in his memoirs that “I don’t believe he [Loeb] ever, to the day of his death, felt truly remorseful for what he had done.”<sup>96</sup> The passage is telling not only because it portrayed Loeb as remorseless, but also because Leopold characterized the Franks murder as something “he,” meaning Loeb, had done. Leopold could just as easily have referred to the crime as something “we had done,” but did not.

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<sup>92</sup> “Parole Board Stenographic Report,” 5 Feb. 1958, LLC at NWU, box 3, folder 6, pp. 3-4, 9-10.

<sup>93</sup> “Parole Board Stenographic Report,” 5 Feb. 1958, LLC at NWU, box 3, folder 6, p. 9.

<sup>94</sup> NL, Letter in Petition of Rehearing, annotated: 8 Aug. 1957, LLC at NWU, box 2, folder 6, p. 2.

<sup>95</sup> Martin, “Murder on his Conscience,” part II, p. 72.

<sup>96</sup> Nathan Leopold, “Leopold Attempts to Sum up Loeb,” *Chicago Daily News*, 21 Nov. 1957.

In both the Martin pieces and Erle Stanley Gardner's introduction to Leopold's memoirs, third party writers either sympathetic to or in collaboration with Leopold characterized his sexuality in ways that benefited his image. Both writers took pains to explain to readers that he was not nor had he ever been a homosexual; his attraction to Loeb was borne more out of youthful infatuation or psychological imperative than erotic desire. He therefore should not suffer any of the stigma to which the time period assigned homosexuality. Martin almost bragged on Leopold's behalf that Leopold had gotten into three fights over homosexual advances from other inmates during his time in prison.<sup>97</sup>

But, although both authors provided interpretations of Leopold and Loeb's relationship that would have been less convincing had Leopold made the same statements directly, neither did so entirely at his own behest. Martin explained Leopold's sexual activities with Loeb as follows:

It was a childish relationship...Leopold was in no sense a 'true homosexual.' His prison record discloses not a single homosexual episode during his thirty years' incarceration. Before his imprisonment he had sexual relations with women. He said recently that his sexual relationship with Loeb was the only one he ever had with another male. He believes his childish relationship with Loeb was of no importance so far as his total style of life is concerned, but that it was of supreme importance so far as his crime is concerned. This seems correct. (And only because his relationship with Loeb was so important a factor in the crime, and because so many myths have grown up around it, has it seemed necessary here to explore a subject distasteful to many people, including Leopold).<sup>98</sup> [Parentheses in original]

Martin's original statement had been a little more blunt in characterizing Leopold's relationship with Loeb as homosexual, but Leopold's brother Samuel insisted on a

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<sup>97</sup> Martin, "Murder on His Conscience," part II, p. 65.

<sup>98</sup> Martin, "Murder on His Conscience," part I, p. 87, parenthesis in original.



change.<sup>99</sup> Erle Stanley Gardner's introduction to *Life Plus 99 Years* a few years later provides an even more explicit denial that Leopold was in any way sexually abnormal.<sup>100</sup> An undated draft which now resides with the papers of Leopold's lawyer read: "there has been a great deal written indicating that there was a homosexual background responsible for this companionship [between Leopold and Loeb]. Some of this has been greatly exaggerated. Some of it probably has a firm foundation."<sup>101</sup> In the final version in *Life Plus 99 Years*, the same passage read: "There has been a great deal written indicating that there was a homosexual background responsible for this companionship. This has been greatly exaggerated. Leopold's prison record indicates no homosexual tendency whatsoever."<sup>102</sup> Evidently, Leopold or someone close to him again convinced an author to be more forceful in his defense of Leopold's sexuality.

In the next passage of both versions, Gardner went on to argue that Leopold's sexual history with Loeb was not unusual and did not indicate homosexuality. Gardner pointed out that the crime occurred a generation before the publication of Kinsey's study of male sexual behavior, whose findings indicated that "homosexual relations in the teen-age group were not as unusual as the smug citizens of 1924 tried to pretend...It is quite possible that many of the persons who [condemned] Loeb and Leopold...as perverted monsters of an alien emotional world, had uneasy memories of events which they were trying to expiate by the very force of their condemnations." In other words, Leopold was more normal sexually in 1924 than

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<sup>99</sup> JBM to Sam Lebold, 10 Dec. 1954, JBM at LOC, box 148, folder 12.

<sup>100</sup> NL to Erle Stanley Gardner, 15 Nov. 1957, NFL at CHM, box 35, folder 1.

<sup>101</sup> Erle Stanley Gardner, n.d., LLC at NWU, box 4, folder 9, p. 6.

<sup>102</sup> Gardner, Introduction to *Life Plus 99 Years*, 11.

people perceived him to be. Ergo, one could infer that the forces which drove his crime were not as exceptional as many people believed.<sup>103</sup>

Although Leopold did not make public declarations about his sexual activities, he enabled those who did by describing himself in a way that reinforced conclusions favorable to his public image. In *Life Plus 99 Years*, descriptions of his sexuality revolved around his relationship with “Connie,” a young woman with whom Leopold claimed to have been “head over heels in love” in 1924. Connie, whose real name was Sue Lurrie, serves in the book as clear proof that Leopold was capable of heterosexual romantic feeling.<sup>104</sup> His feelings for her and hopes for their relationship stand in stark contrast with the direction his life took because of his association with Loeb, and gave Leopold a means of reclaiming his heterosexuality by proving that his relationship with Loeb was not, as Martin would put it, that of a “true homosexual.”

Much mid-twentieth century psychosexual thought embraced a neo-Freudian framework which held that all boys passed through a preadolescent phase of homosexuality as a part of normal psychosexual development during which same-sex crushes were common.<sup>105</sup> Adult homosexuals were men who never progressed to the stages where they transferred their interest to the opposite sex. Although Leopold was 19 when he killed Franks, he reiterated many times in the postwar period that his

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<sup>103</sup> Gardner, Introduction to *Life Plus 99 Years*, p. 11.

<sup>104</sup> Leopold, *Life Plus 99 Years*, 30; Leopold kept her letters and quoted extensively from two of them in *Life Plus 99 Years*, a recognition he extended only to her and to Clarence Darrow. He might simply have thought that the relationship and the letters were stylistically appealing, but he seemed at pains to convince the reader of their importance. He claimed that one of the excerpted letters was special enough to him that he still reread it from time to time. Leopold most directly discusses his feelings for Lurrie on pages 121-123 of *Life Plus 99 Years*, and her possible testimony at the 1924 sentencing hearing on page 71. Photocopies of Lurrie’s letters to Leopold which establish her identity can be found in NFL at CHM, box 2, folder 1.

<sup>105</sup> Stephen Robertson, “Separating the Men from the Boys: Masculinity, Psychosexual Development, and Sex Crime in the United States, 1930s-1960s,” *Journal of the History of Medicine and Allied Sciences* 56, no. 1 (January 2001), 32-33.

emotional age lagged years behind his intellectual or his actual age at the time of the Franks murder, hence his immaturity. By that rationale, he could still explain his feelings for Loeb as a childhood development phase that he had long since progressed beyond, and was in fact already progressing beyond with Lurrie at the time of his arrest. Leopold claimed that during his time in prison, especially the seven years that he and Loeb were kept in separate prisons early in their sentences, he came to appreciate the dark side of Loeb's personality (although that did not stop the two from remaining friends until Loeb's death). Prison and separation had thereby helped Leopold overcome the thing that he cited as the singular explanation for his part in the Franks murder: his worship of Loeb. Loeb's death served in the book as Leopold's final discussion of their toxic relationship.<sup>106</sup>

#### CONCLUSION – THE REFRAMING OF NATHAN LEOPOLD

Much in the normality narrative seemed intended to portray Leopold as something of a tragic figure, almost a victim. His emotional immaturity had created a blind spot when it came to Loeb, and since his relationship with Loeb was the product of childhood pain and loneliness, so by extension was his part in the Franks murder. As a teenager in 1924, he had been able “shut the horror of what I had done into a separate mental chamber where it would not influence my ordinary daily thoughts and actions.” Only after he had already destroyed his life and ended Franks's did the reality of Leopold's actions begin to irrevocably sink in for him: “The passing years have destroyed the emotional barrier which kept the thought of the crime isolated. It is now, and...has been, the central fact of my consciousness. It and the remorse for it

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<sup>106</sup> Leopold, *Life Plus 99 Years*, 268-270.

that engulfs me. If only that barrier could have been broken in time!”<sup>107</sup> The tragedy was that Leopold’s emotional immaturity had kept him from appreciating the consequences of his actions in the Franks murder only after it was too late.

Nor was Leopold above lachrymose descriptions of his own or his families’ suffering at his continued incarceration. His shame at the disgrace he had brought on his family, and the sorrow that he caused his father in particular, were recurrent elements in his professions of remorse. In *Life Plus 99 Years*, he closed out the discussion of his 1953 parole hearing by describing how emotionally devastating the board’s decision was to his brother Foreman, who died later the same year: “how much...the bitter disappointment at the outcome of my parole application may have shortened his life is a thought on which I dare not dwell.”<sup>108</sup> Leopold’s own suffering was a matter for noble resignation. The last sentence of *Life Plus 99 Years* addressed Leopold’s thoughts about his imminent parole hearing in February 1958. It read: “If [the board’s decision] is unfavorable, I shall pray for the fortitude to go on.”<sup>109</sup> Leopold was lucky to avoid the death penalty in 1924 for what might have been the most famously coldhearted child murder in American history. By 1958, he was portraying himself almost as a martyr for enduring his prison sentence.

Leopold’s refusal to discuss the act for which he claimed to feel such remorse, the formulaic nature of most of his claims about it, and his readiness to minimize his role in comparison to Loeb’s all exposed him to criticisms that he used superficial humility to mask presumption, and that his claims of remorse were canned and hollow. As the next chapter will demonstrate, when Leopold and his allies pushed the

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<sup>107</sup> Leopold, *Life Plus 99 Years*, 33.

<sup>108</sup> Leopold, *Life Plus 99 Years*, 365.

<sup>109</sup> Leopold, *Life Plus 99 Years*, 381.

normality narrative more forcefully than ever in the six months leading up Leopold's successful February 1958 parole hearing, they sparked a hotly contested public debate about his crime, the sincerity of his rehabilitation, and the advisability of his release. But the introduction of that controversy to the evolving narrative of the case was in itself an accomplishment for Leopold's side. In 1944, the presumption that Leopold would die in prison was strong enough to obviate any debate over his possible release. The fact that Leopold had so many people arguing on his behalf by 1957, including many prominent behavioral scientists and public figures, indicates the remarkable success of his efforts to reshape perceptions of his crime and his present-day culpability.

Leopold's newfound importance grew strong enough, in fact, that Doubleday publishing house, which in 1955 had been very blunt in its refusal to publish *Life Plus 99 Years* unless Leopold included his account of the murder, agreed in 1957 to publish the book with the compromise that Leopold begin his recollections immediately after the murder.<sup>110</sup> Apparently the editorial board believed that the public interest in Leopold's life had increased sufficiently in the interceding two years for the book to sell even if Leopold would not discuss the action that first brought him into the public eye.

That belief did not, however, stop advertisers from relying on the murder to hook prospective readers.<sup>111</sup> A *Chicago Daily News* promotion of the book's serialization promised "a strange, fascinating story of a murder that shocked the world." In the next sentence, perhaps to avoid alienating customers who developed

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<sup>110</sup> Lee Barker to Ivan [Von Auw], 9 Mar. 1955, NFL at CHM, box 34, folder 15.

<sup>111</sup> "Leopold Will Tell His Own Story," *Chicago Daily News*, 30 Oct. 1957, p. 1.

excessively high expectations, the promotion warned that “this is not a rehash of the killing of 14-year-old Bobby Franks” who, in case readers had forgotten, was the “Hyde Park neighbor of the 19-year-old Leopold and the 18-year-old Loeb.” In terms of the serialization’s content, Leopold was angry that the *Daily News* had extracted the most damaging parts for publication at the expense of his good works in prison. It was not the last time he would have to confront the fact that, though he could steadfastly refuse to discuss his crime, and he could exercise every opportunity to draw focus to his subsequent accomplishments, he could not leave the Franks murder behind as the cause for his name recognition.<sup>112</sup>

The normality narrative only succeeded as much as it did because of how well it suited the popular values and perceptions of the post-World War II era. Indeed, the narrative that Leopold composed of his crime and time in prison so thoroughly epitomized the beliefs and concerns of postwar American society about youth and crime that a fictional parable designed for the purpose could hardly have done so more effectively. And the press, eager to re-infuse the case with meaning for modern times, leapt at the chance to publicize such connections, which then increased the sense of relevance that surrounded the case in a self-reinforcing cycle. The specific applications had changed, but by the time of Leopold’s final parole hearing in February 1958, the Leopold-Loeb case had gone from being simply a famous historical event to an issue reinfused with symbolic power for a new era, particularly in postwar perceptions of homosexuality, sexual crime, juvenile delinquency, and, most emphatically from Leopold’s position, rehabilitation. A heavily subjective revision of the case, designed for a very specific purpose and within a very specific

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<sup>112</sup> NF to Sam Lebold, 10 Nov. 1957, NFL at CHM, box 35, folder 2.

historical context, thereby acquired the authority of a historical event in coloring perceptions of Nathan Leopold and Richard Loeb's criminality.

## CHAPTER FOUR

### THE MEDIA CAMPAIGN FOR LEOPOLD'S PAROLE, 1957-1958

"There are a lot of people who think the whole parole system hinges on this case."

– Joseph Carpentier, Member of the Illinois State Parole Board<sup>1</sup>

#### INTRODUCTION

In the 1950s, the emergence of significant public support for the idea that Leopold deserved to live as a free citizen introduced a new dimension to the ways in which he and his case were discussed in the public sphere. Before the postwar era, very few people supported Leopold personally. Even most people in the minority that supported sparing his and Loeb's lives in 1924 had been voicing approval for the principles involved, not sympathy for Leopold as an individual. In the 1950s, however, especially the late 50s, as Leopold used the normality narrative to parlay the public fascination with his case into a means of making himself into a sympathetic figure, the controversy became about whether he should continue to be in the criminal justice system's charge at all. That shift in the case's discourse allowed Leopold to transition, at least partially, from infamous killer to celebrity, and in doing so fueled a new public fascination with knowing the "real" Leopold that he turned to his advantage.

The traits of the celebrity suited Leopold's ends perfectly during his media campaign for parole. In *The Image* (1964) Daniel Boorstin describes celebrity as the

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<sup>1</sup> Parole Board Report: Visitors Heard on Behalf of Nathan Leopold, 14 May 1958, Leopold-Loeb Collection at Northwestern University (LLC at NWU), box 3, folder 8, p. 53.



elevation of certain individuals by and within mass culture in order to satisfy a public demand for heroes. Celebrity, he argues, democratized and therefore degraded heroism by disconnecting accomplishments from public prominence, leading him to his famous statement that the principal distinction between a celebrity and a non-celebrity was simply that the former was well known. Celebrities thus owe their status to continued media exposure rather than to any intrinsic form of greatness, and they can distinguish themselves from other celebrities primarily through the distinctive personalities they project through that exposure.<sup>2</sup> Leopold was well known and, once he was ready to cooperate with the press, had little trouble in persuading reporters to keep his name prominent in the news. By tapping into that established cultural approach to well-known figures, he was able to keep the media endeavors in which he participated focused on his modern persona, rather than on the crime that made him (in)famous. His arguments in favor of his release were, after all based on presenting a certain kind of personality: that of a rehabilitated, mature adult who was ready for release into the general public.

#### LEOPOLD AND CELEBRITY JOURNALISM IN THE 1950S

Leopold-Loeb's history in the press allowed Leopold to benefit from the ambiguities that surrounded journalists' coverage of and the public's interest in celebrity at mid-century. Boorstin argues that the media-created nature of celebrities fostered skepticism among a public that was aware that the images it received through mass media were not necessarily full or accurate representations.<sup>3</sup> This skepticism,

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<sup>2</sup> Daniel Boorstin, "From Hero to Celebrity: The Human Pseudo-Event," in *The Image, Or, What Happened to the American Dream*, (New York: Atheneum, 1962), pp. 45-76.

<sup>3</sup> Boorstin, 75.

ironically, nurtured the public's interest in celebrity journalism and shaped its content. Historian Charles Ponce de Leon, studying the years 1890-1940, argues that celebrity journalism sought to offer readers the sense that they were glimpsing the "real" human being behind the persona: "Articles encouraged readers to believe they were glimpsing the subject's 'real self,' a self that under ordinary circumstances was inaccessible to ordinary citizens, but was now exposed thanks to the work of the press and the willingness of the subject to allow reporters into the private spaces that he or she inhabited."<sup>4</sup> This relationship between the celebrity and the press created a seeming paradox: the celebrity's cooperation with journalists was essential for helping the journalist, and therefore his or her readers, to get behind the image that had been created precisely for public consumption.

Leopold's celebrity had an additional twist that intensified popular interest in his own statements. Typically, Ponce de Leon argues, celebrity journalists faced an imperative to "separate themselves from the overtly self-promotional campaigns orchestrated by celebrities and their publicists and foster the illusion of press detachment from the apparatus of publicity," as a way of getting around the apparent contradictions of celebrity journalism.<sup>5</sup> In Leopold's case, however, decades of shunning the public eye helped to create a *demand* for him to contribute directly to his own public image. In 1924, the alienists and the press had provided people with the most private details of Leopold's inner life, but Leopold himself had been publicly silent since Clarence Darrow took over his case soon after Leopold and Loeb's arrest. Leopold had provided the alienists with the information that they used

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<sup>4</sup> Charles Ponce de Leon, *Self-Exposure: Human-Interest Journalism and the Emergence of Celebrity in America, 1890-1940*, (Chapel Hill: U of NC P, 2002), 65.

<sup>5</sup> Ponce de Leon, 274.

to dissect his psyche, but the alienists had been buffers between him and the public. By the 1950s, he was thus a well-known figure who had not been seen actively crafting his own image for three decades. His very willingness to embrace a public persona by talking to reporters constituted a new level of disclosure in itself – one that journalists could cover in their profiles – which made it easier for him to combine people’s desire to know his “true self” with an overtly self-promotional campaign.

Leopold was trying to engage people in what Lauren Berlant has called an “intimate public,” a space in the public sphere in which people develop a sense of social belonging with one another through the feeling that they shared the beliefs and values expressed in a given text or collection of texts.<sup>6</sup> During the sentencing hearing, an intimate public or intimate publics had formed in the public expressions *about* Leopold, in the collective effort to evaluate and judge him as a subject. In the media campaign for parole, Leopold was trying to form an intimate public in the expressions *by* him, to create a sense of commonality that would make people feel not just that they understood him, but that they “knew” him. He used reporters – many of whom were only too happy to provide him with a soapbox in exchange for access – to speak to the public directly through statements and interviews for virtually the first time since 1924, self-consciously inviting it into his carefully arranged private spaces to see a “true self” that shared in its core values.

The normality narrative, Leopold’s primary vehicle for speaking to the public, was a version of what Ponce de Leon terms “True Success: The Master Plot of

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<sup>6</sup> Lauren Berlant, *The Female Complaint: The Unfinished Business of Sentimentality in American Culture*, (Durham: Duke UP, 2008).

Celebrity Journalism,”<sup>7</sup> adapted for the life of a rehabilitated convict instead of a movie star or athlete. In the “true success” story, the celebrity’s happiness does not come from materialism, egotism, or the glamour of his or her public life, but rather through self-knowledge and an appreciation for the simple pleasures of “right living” in one’s private life. It was a master plot perfectly suited to Leopold. He could argue that his attainment of true success lay in discoveries that made him an ideal candidate for parole: that he had come to understand how misguided he was as a youth, that as an adult he found his greatest solace in helping others, and that he simply wanted to live an austere life in obscurity if released. The normality narrative thus gained credibility from the form in which it was disseminated as well as its content. It was a story of psychological progression that gained credibility in content by tapping into the postwar era receptiveness to the behavioral sciences, and which gained credibility in form by following an established trope of celebrity journalism.

#### POPULAR MEMORIES OF 1924 AND POPULAR INTEREST IN LEOPOLD IN THE 1950s

Leopold’s efforts to change his public image came at what would have been an important juncture in the case’s history anyway. By 1957, when Leopold had a highly publicized hearing for gubernatorial clemency, an entire generation had been born and grown to adulthood that had not lived through the *cause célèbre* of 33 years earlier. The Franks murder and the sentencing hearing were known to them only as subjects of historical or antiquarian interest, not prompts for immediate outrage. Their sudden interest in the case helped it to make the transition from memory to meme, an idea culturally passed from one generation to the next.

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<sup>7</sup> Ponce de Leon, 106-140.

The fading memories of people who were alive in 1924 helped give the case plasticity. For most people in the 1950s, the primary source of available information about the case – often the sole source – were the stories run in contemporary papers in connection with Leopold’s release. Memory and retrospection were often explicitly at the forefront of these stories, penned by journalists who wrote their summaries of the case as recollections, or by reporters who reiterated the narrative of the case without attributing the sources for their account. Ironically, many of these stories, intended at the time to provide readers with the necessary background to understand the case, now reveal how the intervening years had clouded their authors’ perceptions.

Sometimes, journalists’ factual errors were telling mischaracterizations, such as describing the Franks murder as a sexual crime,<sup>8</sup> but in other instances reporters got the facts wrong simply because they relied on hazy recollections or misguided notions that they did not fact check.<sup>9</sup> Even writer Erle Stanley Gardner, who knew Leopold and who had previously written about the case for the *New York Times*, was off in his dates of the 1924 event by a full ten years in his first draft of the introduction to *Life Plus 99 Years*.<sup>10</sup> Evidently, writers considered the 1924 event a matter of established fact about which they were already informed and which they did

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<sup>8</sup> Examples: “Leopold Denied Freedom,” *Scranton, Pa. Times*, 31 July 1957; *Paradox of Parole*, *Mt. Vernon, Ohio News*, 3 Aug. 1957; Enid, Okla. *Daily Eagle*, 5 Aug 1957; “When Mercy Goes Wrong,” *Philadelphia Bulletin*, 1 Aug. 1957.

<sup>9</sup> Misdates were fairly common, as was getting Leopold and Loeb’s ages in 1924 wrong, misstating the precise details of their crime and its courtroom history, and misspelling Bobby Franks’s name as “Bobby Frank,” an error that inadvertently reinforced the press’s frequent lamentation that the press’s focus on Leopold obscured his victim. For examples, see: Dorothy Thompson, “Leopold Doesn’t Deserve Parole,” *Gary [Indiana] Post-Tribune*, 6 Aug., 1957; “Time Makes a Difference,” *McCune [Kansas] Herald*, 2 Aug. 1957; Dick Fry, “Loeb and Leopold,” *Oakland Tribune*, 1 Aug. 1957. Leopold’s Freedom Attempt,” *Centerville Daily Iowan*, 2 Aug. 1957.

<sup>10</sup> Erle Stanley Gardner, “Killers for Kicks,” review of *Compulsion*, by Meyer Levin, *New York Times*, 28 Oct. 1956; EG to NL, 14 Nov. 1957, LLC at NWU, box 5, folder 2.

not need to explore further to accurately judge, a tendency probably not restricted only to the people who aired their views in the media. The details of Leopold's crime, then, were subjects of renewed interest but not renewed scrutiny in the postwar era. Misconceptions of Leopold's crime could hurt Leopold – as with the assertions that Franks had been sexually assaulted – but the press coverage's lack of grounding in immediate fact, coupled with the eagerness to hear from Leopold directly, also made it possible for his retrospective characterizations of the crime to find purchase.

Nowhere did Leopold offer the public a more intimate glimpse of himself than in *Life Plus 99 Years*, and the book's marketability in the late 1950s is a testament to the increased public interest in knowing the "real" Leopold. In January 1957, Leopold had largely given up on publishing the book, unable to secure a coauthor with whom he could work or find a publisher willing to accept the book as it was.<sup>11</sup> But in March, a mention of Leopold's memoirs in *Life* magazine sparked a slew of solicitations from major publishing houses.<sup>12</sup> Leopold's refusal to discuss the Franks murder continued to impair his ability to sell the rights to the book. But the mass of publicity that surrounded his parole efforts – and probably also the success of Meyer Levin's bestselling fictionalization of the events of 1924, *Compulsion* – were enough to convince Doubleday that Leopold's book was worth publishing under the compromise that Leopold's coverage begin with the immediate aftermath of the murder.<sup>13</sup> Doubleday was right. Leopold's willingness to invite readers into his life,

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<sup>11</sup> NL to Ralph Newman, 27 Jan. 1957, Nathan F. Leopold Collection at the Chicago History Museum Research Center (NFL at CHM), box 28, folder 1.

<sup>12</sup> "Nathan Leopold, of the Celebrated Leopold-Loeb Case, is Seen and Heard after 32 Years in Prison," *Life*, vol. 42, no. 9. (4 Mar. 1957), 61-64, 69; Publisher solicitations of Leopold's manuscript are in CHS, box 28, folder 1.

<sup>13</sup> Meyer Levin, *Compulsion*, New York: Simon and Schuster, 1956.

even if he did not provide the complete story, had become enough of a selling point to readers to put the book on the *New York Times* bestseller list for more than two months.<sup>14</sup>

### LEOPOLD'S PAROLE AS A SOCIAL CAUSE

Erle Stanley Gardner – most famous for having created the popular Perry Mason character – probably agreed to write the introduction for the book because, like many of Leopold's supporters with an interest in criminology, he saw in Leopold the chance to score a symbolic victory. Gardner had been an ardent supporter of criminal justice reforms for his entire adult life, and had a strong tactical understanding of how to use media to argue for causes in which he believed, among them rehabilitation and parole.<sup>15</sup> Leopold brought Gardner into the project; the two men had been corresponding since late 1956, when Gardner published a highly favorable interpretation of Leopold's crime and the potential for his rehabilitation in *The New York Times* and Leopold wrote to thank him.<sup>16</sup> At that point, Leopold was hoping he could convince Gardner to coauthor the book. Gardner declined, but he and Leopold stayed in touch, and in 1957 Gardner agreed to write the introduction.<sup>17</sup>

Gardner's introduction benefited both Doubleday and Leopold. Doubleday benefited because, short of successfully convincing Leopold to describe the Franks murder in his own words, getting Gardner to discuss events of 1924 was probably the

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<sup>14</sup> NL to AG Ballenger, 23 May 1958, NFL at CHM, box 2, folder 24.

<sup>15</sup> See, for example: Erle Stanley Gardner, *The Court of Last Resort*, (New York: William Sloane, 1952); for more on Gardner's life, see: Alva Johnston, "The Case of Erle Stanley Gardner," *Saturday Evening Post*, part I: vol. 219, no. 14 (5 Oct. 1946), 9-11, 88-89, 91-92, 95. Part II: vol. 219, no. 15 (12 Oct. 1946), 26-27, 102, 105, 108, 110, 112. Part III: vol. 219, no. 16 (19 Oct. 1946), 24, 76, 78, 81, 84, 87, 89.

<sup>16</sup> Gardner, "Killers for Kicks."

<sup>17</sup> Leopold asked Gardner about coauthorship in his second letter to Gardner: NL to Erle Stanley Gardner, 15 Dec. 1956, NFL at CHM, box 35, folder 1.

best substitute for which the publisher could hope. As an extraordinarily successful crime novelist also known for his nonfictional writing on the subject, Gardner could review the details of the murder without seeming like a sensationalist. Leopold benefited from having such a prominent figure lend authority to his autobiography of rehabilitation with an interpretation of the crime wholly compatible with his own. Gardner, like the reporters with whom Leopold collaborated, lent the normality narrative the illusion of press detachment that Ponce de Leon argues was so important to celebrity journalism.

Gardner did not restrict his support for Leopold and the normality narrative to explicit endorsements of it. On November 15, 1957 – the same day the parole board announced it would rehear Leopold’s parole case<sup>18</sup> – *The Court of Last Resort*, a short-lived television series based on Gardner’s magazine series of the same name, deviated from its usual focus on criminal investigation to run an episode about parole. “The Conrad Murray Case” tells the fictional story of a young punk who murdered two mom-and-pop store owners in front of their young son without provocation. After 34 years in prison (Leopold had served 33 at this point), Murray comes up for parole a different man, one so thoroughly changed that even his victims’ grown son no longer feels needs to remain incarcerated. The episode closes with Murray going free, followed by a public service message to the public advocating a progressive attitude

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<sup>18</sup> Robert Howard, “New Hearing for Leopold,” *Daily Tribune*, 15 Nov. 1957.



towards parole.<sup>19</sup> Gardner told Leopold about the episode in advance and kept him apprised of the episode's air date.<sup>20</sup>

Gardner was not the only authority to support Leopold, although he probably was the best known to lay people. The connections Leopold had been forging for years in the criminological community brought to his aid a virtual "who's who" list of mid-century criminal behavioral scientists. William Byron, Ferris Laune, Donald Clemmer, David Abrahamsen, Lloyd Ohlin, Ernest Burgess, Donald Cressey, Edwin Sutherland, Lemoyne Snyder, and Karl Menninger all wrote to the governor or the parole board on Leopold's behalf at some point. These men's individual levels of dedication to Leopold varied – some did nothing more than write a letter, others did considerably more – but their collective endorsement of one specific prisoner's release indicates that Leopold had managed to make himself not just into a celebrity, but into a cause as well. Some of these men knew Leopold through research they conducted at Stateville while affiliated with the University of Chicago or Northwestern, or through other professional avenues, while others did not personally know Leopold at all.<sup>21</sup> Several treated Leopold as a virtual colleague at various points.<sup>22</sup>

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<sup>19</sup> Reginald Le Borg, director, "The Conrad Murray Case," *The Court of Last Resort*, season 1, episode 7, air date 15 Nov. 1957, NBC. Information accessed via Internet Movie Database, 10 Dec. 2012, <http://www.imdb.com/title/tt0549697/>

<sup>20</sup> NL to Erle Stanley Gardner, 15 Nov. 1957, NFL at CHM, box 35, folder 1.

<sup>21</sup> LLC at NWU, box 6, folder 5; NFL at CHM, box 2, folder 4.

<sup>22</sup> After Leopold's release, for example, Menninger asked permission to reprint one of Leopold's articles in his own journal, and for feedback on one of his own upcoming works. Laune had worked on his doctoral thesis alongside Leopold for three years, and did not list Leopold as a coauthor only because of the prison administration's resistance to the idea. NFL at CHM, box 15, folder 12. Ferris Laune to EG, 12 Jan. 1958, LLC at NWU, box 4, folder 10. Laune published his dissertation as *Predicting Criminality: Forecasting Behavior on Parole*, (Evanston, Ill.: Northwestern UP, 1936).

Many people resented the sudden rise in support for Leopold, and several newspapers characterized the divisions of opinion as a matter of intergenerational conflict. Young people, in this view, were more likely to focus on the fact that Leopold had spent more than thirty years in prison by 1957, well over half his life and enough time for him to change in ways that rendered a sentence he received in 1924 anachronistic. Conversely, people old enough to have experienced the outrage that the Franks murder sparked firsthand were more likely to believe that Leopold and Loeb had received all the clemency to which they were entitled in 1924, or more, and often equated Leopold's release with forgetting the Franks murder. The denial of his freedom, to this cohort, would have been a principled stand to always remember the crime he committed.<sup>23</sup> The division of opinion, both in how the papers framed the case and the arguments put forward by people on both sides of the Leopold issue, thus took shape as a conflict between progressives and traditionalists over what the meaning of Leopold-Loeb should be. People were aware that the case's intergenerational legacy was at a crossroads, and wanted to control the moral of the case's story.

### LEOPOLD'S SUPPORT NETWORK

In Leopold's petition for gubernatorial clemency in July 1957 and his successful parole application in February 1958, he exhibited a new aggression in his efforts to shape his image in the public sphere as a means of improving his chances in the legal one. He had begun laying the groundwork for his new strategy earlier. His

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<sup>23</sup> Examples: "Most Oldsters Approve Governor's Rejection of Leopold clemency Plea." *Knoxville Journal*, 2 Aug. 1957; "1924 and Now," *Lawrence [Kansas] Journal-World*, 16 Aug. 1957; "Should Illinois Parole Leopold?" *Binghamton [New York] Press*, 16 July 1957; "Straws in the Wind," *Peoria [Ill.] Journal-Star*, 14 July 1957.

careful forays into media cooperation in the late 1940s and in preparation for his 1953 hearing before the parole board had shown him the potential value of favorable press exposure. He had also learned something of how to evidence that people supported his release, and to develop a network that would help him gather that evidence. People who knew Leopold had written letters on his behalf for years, either to the parole board or the governor in direct support of his release, or for addition to his prison record.<sup>24</sup> By 1952, Leopold was looking to expand that facet of his application. In some cases, he made contact with people he had not seen for more than twenty years to ask them for expressions of support. He kept a careful inventory of their response and what they were willing to do for him, such as write, appear personally, or solicit others to write.<sup>25</sup> In the process, he began to forge connections with people who would be important to his later applications. His activities in actively drumming up support, however, were fairly low profile before 1957. For the 1957 clemency and the 1958 parole application, Leopold wanted publicity and expressions of public support to be integral parts of his parole strategy instead of a supplementary element of his application. That required an approach that was bigger in scale, and the development of a cadre of supporters coordinating efforts on his behalf.

The change began in 1955, when Leopold made his first substantive challenge to his family's control of his legal initiatives. Prior to that challenge, his two brothers – first Mike Lebold, and then Samuel Lebold after Mike's death in 1953 – had, as

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<sup>24</sup> NFL at CHM, box 2, folder 4.

<sup>25</sup> The inventory is in NFL at CHM, box 33, folder 1. Leopold first reinitiated contact with both William Friedman and Abel Brown to solicit their letters of support. He had not had contact with either of them in more than twenty years, and each would turn out to be important a friend and important supporter for Leopold. NL to Abel Brown, 27 May 1952, NFL at CHM, box 33, folder 13; NL to Williams Friedman, 11 Apr. 1952, NFL at CHM, box 33, folder 13.

successive patresfamilias, taken it as their prerogative to restrain his use of the media. In determining the best course of action for Nathan's case, Mike and Samuel had tried always to balance their desire to help their brother achieve his freedom with their desire to protect the family from as much publicity as possible. They had already lived through the ordeal of Leopold's arrest and sentencing hearing and changed their family name to escape what they could of the lingering notoriety he had brought to them as "Leopolds," and they opposed any measure that could turn Nathan's possible release into a redux of the 1924 media's interest in the case.<sup>26</sup> Leopold too was concerned with protecting his family and their good name, but did not share his brothers' aversion to the attention that his parole efforts would attract. He was confident that in using the media to drum up public support for his parole he would also redeem his name, and that those angered by his attempts at release would be more than offset by the many people convinced of his rehabilitation. Therefore, embracing the press's attention to his case – which he considered essential to his release – was worth the downside it entailed.

For Leopold to implement his strategy, however, he would need connections beyond his family, something it took him some years to cultivate. His friendship with Chicago bookseller Ralph Newman was a critical step. Newman had been a friend of Leopold's older brother Mike, and after Mike died Newman dedicated himself wholeheartedly to helping Nathan get released.<sup>27</sup> He was both a factotum and an advisor for Leopold in the parole campaign, and the literary agent for the sale of *Life Plus 99 Years*. He provided innumerable services and favors, helped Leopold to

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<sup>26</sup> Leopold's letters to and about his brothers in NFL at CHM and LLC at NWU bear this out.

<sup>27</sup> "Biographical Sketch of Nathan Leopold," Finding Aid to NFL at CHM, p. 2.

determine the best course of action, and used his connections in politics, the press, and society to gather and distribute helpful information about Leopold.

Leopold recognized in 1955 that he would need a new attorney if he wanted to deviate from his family's wishes and pursue parole more aggressively. Until then, his lawyer for all of his prior postwar legal needs had been William Friedman, an old friend of the Leopold/Lebold family.<sup>28</sup> Leopold did not dispute that Friedman's work was competent and professional, but Friedman was too cautiously conservative for Leopold's purposes. Friedman shared Mike and Samuel's belief that it was best to plead Leopold's case to the parole board as though he were any other prisoner, with a minimum of publicity and little fanfare. Leopold went along with this approach several times, beginning with his 1949 petition for commutation of his sentence based on his work for the malaria project, but he started showing reservations about Friedman as early as 1952, the same year Friedman began to represent him. By 1955, Leopold was convinced that a more specialized approach would be necessary, and he retained a man named Varian Adams.<sup>29</sup> Friedman, however, would continue to be included in Leopold's legal matters, as would Leopold's family; the family controlled Leopold's trust fund, and they would not release funds without Friedman's approval.<sup>30</sup>

Leopold's relationship with Varian Adams soured quickly as it became apparent to both men that Leopold's case required more of a commitment than

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<sup>28</sup> Elmer Gertz, *A Handful of Clients* (Chicago: Follett, 1965), 7.

<sup>29</sup> Leopold mentions getting in touch with Friedman for the first time in 25 years in a letter from April, 1952, but does not mention Friedman's service as his attorney at that time. Leopold first expressed an interest in hiring Adams in a letter dated September 1952. For either his own reasons or his family's, Leopold did not hire Adams at that time, but then reconsidered Adams in 1955. NL to William Friedman, 11 Apr. 1952, NFL at CHM, box 33, folder 34. NL to Mike Lebold, 10 Sep. 1952, NFL at CHM, box 1, folder 9, p. 4; AG Ballenger to NL, NFL at CHM, box 34, folder 52, 6 Sep. 1955.

<sup>30</sup> NL to Varian Adams, 19 Nov. 1955, NFL at CHM, box 36, folder 1.

Adams was ready to make. Throughout their working relationship, Leopold inundated Adams with innumerable requests for minor errands and services, and often urged him to move more quickly on certain tasks. Adams, for his part, rankled at the time and attention Leopold's case required. He often failed to meet with Leopold or complete certain tasks with the vague excuse that "circumstances" had arisen that prevented him from so doing.<sup>31</sup> Adams was still the attorney of record when the parole board heard Leopold's clemency petition in July 1957, but Leopold had already found Adams's replacement.

Elmer Gertz was not a criminal lawyer by trade, but he had been interested in the case since at least 1952. He met Leopold through Ralph Newman in May 1957, and represented Leopold in the sale of *Life Plus 99 Years* to Doubleday. Leopold then asked Gertz to assist Adams at the July 1957 clemency hearing. After that petition failed, Gertz became Leopold's sole attorney. He was ready to handle the case exactly as Leopold wanted, and became the third member of the tripartite team of himself, Leopold, and Newman.<sup>32</sup>

Gertz's participation was the final element Leopold needed to pursue the parole campaign as intensely as it could be pursued. He worked tirelessly for Leopold, and was glad to handle the various minor tasks on Leopold's behalf, such as managing Leopold's correspondence, that had caused friction between Leopold and Adams. Gertz's correspondence with Leopold indicate that the two had a virtual partnership in the handling of Leopold's case, and over the years they developed a

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<sup>31</sup> NFL at CHM, box 36, folder 1.

<sup>32</sup> Gertz, *HOC*, 7-13.

relationship that went far beyond that of the average lawyer and client.<sup>33</sup> Gertz would continue to represent Leopold until the latter's death in 1971, becoming probably the single most influential person in Leopold's life – more so than Newman, the man Leopold called his best friend,<sup>34</sup> or even, when the time came, Leopold's wife Trudi – largely as a result of his work Leopold during the media campaign.

Gertz and Newman worked with Leopold to combine a formal legal case with back-channel networking and an intense, carefully orchestrated public relations campaign. Gertz and Newman's activities overlapped, but generally Newman was the behind-the-scenes operator. Subtler by nature and less interested in seeing his name in print than Gertz, Newman contacted people and forged relationships that let him tap into and disseminate information important to Leopold's case. Gertz, on top of his preparations for Leopold's legal case, was a public spokesperson for Leopold, granting numerous interviews and issuing countless public statements to the press in order to promote Leopold's cause. Gertz considered the exposure a perk.<sup>35</sup> Part of his compensation for his work for Leopold, in fact, was the right to sell a story about Leopold in any manner he chose once doing so would no longer affect Leopold's legal case. It was an extremely rare concession from Leopold, perhaps unique, considering how closely he kept control of his story, and a sign of his profound trust in Gertz.<sup>36</sup>

Leopold received help in more minor ways from countless individuals who favored his parole out of interest and/or moral conviction, but who were less deeply

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<sup>33</sup> Both the Leopold-Loeb Collection at Northwestern University and the Nathan Leopold Collection at the Chicago Historical Society contain hundreds of consultative letters between Leopold and Gertz.

<sup>34</sup> NL to RN, 2 Feb. 1958, NFL at CHM, box 29, folder 1.

<sup>35</sup> Gertz, *HOC*, 111-112.

<sup>36</sup> NL to EG, 16 July 1959, LLC at NWU, box 28, folder 1.

involved in Leopold's campaign than his closest confidants. Among his family, friends, Gertz, and Newman, there were few prominent people in the Chicago area with whom Leopold could not get in touch if he had reason to suspect that they would be favorably disposed towards him. The most common form of assistance was simply to provide a letter to the governor or the parole board expressing support for his release. Around the time of his preparations for the July 1957 clemency hearing – with the combination of Gertz's help and a higher media profile that facilitated communications with a broader range of people – Leopold's letter collecting kicked into high gear. He became almost fixated on collecting letters from as many people as possible. He asked them of reporters, former prison officials (current officials were forbidden from commenting), celebrities, criminologists, acquaintances, and virtually anyone with whom he had had contact, however limited, who might be amenable to the request. He was not looking at them just as character testimonials from people who knew him, but as evidence of the public support for his release. More than likely, Leopold clung to this tactic as one of the relatively few things he could do to directly aid his case, and enjoyed amassing evidence that he had won over so many people to support him.<sup>37</sup>

#### NATHAN LEOPOLD, JOSEPH RAGEN, AND GLADYS ERICKSON

Outside of the tight inner circle of Gertz, Newman, and Leopold's closest friends and family, Leopold's most important allies were probably journalist Gladys Erickson and Stateville Warden Joseph Ragen. In the years following "Leopold's Own Story" in 1952, Erickson remained friendly with Leopold and continued to have

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<sup>37</sup> Many of these letters can be found, as Photostats, carbon copies, or originals, in LLC at NWU. NFL at CHM has many of them in various formats as well.



special access to him for stories on his life “in stir” and his attempts to secure release. Although she and Leopold never came to terms on a coauthorship arrangement for *Life Plus 99 Years*, she tried to help Leopold in marketing the book.<sup>38</sup> She also provided him and his allies with grapevine information about his upcoming parole hearings.<sup>39</sup>

Erickson’s relationship with Ragen was similar to her relationship with Leopold, but she and Ragen were probably closer. Ragen granted Erickson access to the material she needed to write compelling copy, and Erickson in turn gave Ragen a means of publicizing his own agenda. Ragen and Leopold’s goals, while separate, were therefore wholly compatible both with each other and with Erickson’s editorial inclination to use her coverage to convince the public of the merits of rehabilitation in prison and support for parole. Where Leopold used his arrangement with Erickson to advocate for his personal rehabilitation in prison and the essential justice of his parole, Ragen used his arrangement to advocate more generally for the virtues of progressive penology on an institutional level. Leopold’s efforts to craft an image as the paragon of prison rehabilitation to secure his parole made him an ideal poster boy for the potential of a prison to rehabilitate its charges. All three people, Ragen, Erickson, and Leopold, therefore found their interests frequently intersecting, and cooperated throughout the 1950s to achieve their ends.<sup>40</sup>

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<sup>38</sup> NL to RN, 9 May 1954, NFL at CHM, box 34, folder 23; NL to Gladys Erickson, 27 Aug. 1961, NFL at CHM, box 6, folder 8.

<sup>39</sup> Helen Williams to Gertz, 30 Oct. [1957?], LLC at NWU, box 24, folder 1.

<sup>40</sup> The most direct collaboration among all three participants was *Warden Ragen of Joliet* (1957), Erickson’s highly complimentary book about Ragen and his administration of the twin prisons. Although the book was primarily Ragen and Erickson’s effort, Leopold played an important part in its construction, furthering his relationship with both Erickson and Ragen. Erickson did not usually attribute her information to specific sources in the book, so it is impossible to know exactly what information Leopold provided, or when he served as one of several sources. Leopold, however, had

Elmer Gertz later recalled that “during most of Leopold’s imprisonment, he [Ragen] had been extraordinarily helpful; indeed, it would have been difficult to single out anyone in official life who was more dedicated to the proposition that Leopold deserved to be freed.” The warden granted Leopold extra correspondence privileges with Gertz, sometimes allowing the two men to exchange normally prohibited material.<sup>41</sup> Ragen also made Leopold’s media activities possible, and wielded great influence on those activities’ content and form. Ragen granted Leopold permission for whatever interviews the latter granted, and extended special visitation privileges to Erickson and John B. Martin (the author of the 1955 *Saturday Evening Post Series* on Leopold) to facilitate their features on Leopold, both reporters whom Ragen knew and had reason to trust.<sup>42</sup> He granted similar dispensations for the publication of *Life Plus 99 Years*.<sup>43</sup> Ragen stayed apprised of each project’s content before its publication, and they all portrayed him well, some by directly praising his administration, others by focusing on the rehabilitation of a prisoner under his charge.<sup>44</sup>

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lent Erickson a copy of the unpublished manuscript for *Life Plus 99 Years* in 1955, when he and Erickson were considering rewriting the book together, and Erickson seems to have used it as a reference for *Warden Ragen* two years later. NL to RN, 5 Nov. 1955, NFL at CHM, box 28, folder 1.

<sup>41</sup> Gertz, *HOC*, 146, 113.

<sup>42</sup> NL to Irv Kupcinec, 19 Mar. 1957, box 35, folder 1; NL to Ralph Newman, 17 Oct., 1954, NFL at CHM, box 34, folder 23; Ragen had become familiar with Martin when the journalist wrote a *SEP* series on Stateville in which Ragen figured prominently, and had a good enough relationship with Erickson to let her write his biography a few years after the series on Leopold. John Bartlow Martin, “Inside America’s Toughest Prison,” *Saturday Evening Post*, vol. 224; part I, no. 16 (20 Oct. 1951), 19-21, 52, 56, 58; part II, no. 17 (27 Oct. 1951), 38-39, 64, 66-68; part III, no. 18 (3 Nov. 1951), 34, 160-162.

<sup>43</sup> Joseph Ragen to NL, 13 May 1957, NFL at CHM, box 40, folder 9.

<sup>44</sup> Joseph Ragen to Tim Seldes, 13 Dec. 1957, LLC at NWU, box 24, folder 3; NL to Ralph Newman, 17 Oct., 1954, NFL at CHM, box 34, folder 23. There is no direct evidence of Ragen monitoring the content of the Erickson series in *The American*; but, given Ragen’s relationship with Erickson, his monitoring of the content of *Life Plus 99 Years*, and the fact that Leopold submitted his, Leopold’s, essay on Ragen for Erickson’s 1957 book about Ragen to the warden for approval, it is highly unlikely that Ragen was removed from the content of the *American* series.

The content and goals of the normality narrative made Leopold's and Ragen's agendas compatible; Ragen saw favorable coverage for Leopold as favorable coverage for himself and his policy positions. When the warden became head of the American Prison Association in 1951, he used his presidential address to declare it the duty of prison administrators to embrace the notion of rehabilitation and the practice of parole, and to structure programs for their facilities accordingly. If lay people looked unfavorably on paroling offenders, he believed, their opposition resulted from a lack of information, and prison administrators needed to find means of informing them. Leopold's fame provided Ragen with a platform with which reach the public, while his prison record and apparent rehabilitation showed how prison time could be made constructive. Ragen and Leopold were thus both eager to embrace the photo opportunities that arose when Leopold gave blood, volunteered for the malaria project, or signed his donation papers for the Stateville eye-bank. Ragen wanted to attract attention to the constructive activities at Stateville, while Leopold wanted to attract attention to his role in such activities. They were both very interested in the "Conrad Murray Case," the episode of *The Court of Last Resort* about parole. Ragen gave Leopold special permission to watch it and asked Leopold to write up a synopsis. Leopold's review was highly favorable.<sup>45</sup>

Leopold boosted Ragen's personal stature too. As far back as 1940, long before Leopold had woven his prison activities into a coherent narrative, he wrote to Ragen suggesting that Ragen author a magazine piece on the Stateville Correspondence School for the *Saturday Evening Post*, going so far as to include an

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<sup>45</sup> NFL at CHM, box 35, folder 1: NL to Erle Stanley Gardner, 15 Nov. 1957; NL, synopsis of "The Conrad Murray Case" for Warden Ragen.

article he thought could serve as a template.<sup>46</sup> The biography with which Ragen cooperated, *Warden Ragen of Joliet*, relied on the famous inmates Ragen oversaw to attract readers. The month before Leopold's clemency hearing, Ragen appeared alongside Leopold on an episode of NBC's *Night Line*.<sup>47</sup> And, when the *American's This Week* magazine wanted a feature from someone close to Leopold talking about his parole and Elmer Gertz declined their offer, Ragen stepped in. Gertz claimed to have declined on ethical grounds, but evidently Ragen felt no such compunction. "Why I Believe in Leopold," by Joseph Ragen as told to Gladys Erickson, ran on April 27<sup>th</sup>.<sup>48</sup>

Ragen's idea of an appropriate professional detachment towards Leopold might seem to have been lenient, but Ragen resisted what he perceived as inappropriate presumptions on Leopold's part. Ragen insisted that Leopold delete a passage in *Life Plus 99 Years* in which Leopold quoted Ragen as supporting Leopold's parole (wardens were not supposed to comment on such matters). The offending passage was removed.<sup>49</sup> Similarly, Ragen spent the *Night Line* interview extolling Leopold's contributions and activities as a prisoner, but declined to comment specifically on his parole when asked. (Soon after Leopold's parole, Ragen volunteered his opinion favoring that decision with "Why I Believe in Leopold.") Ragen also declined to accept a free copy of *Life Plus 99 Years* as a token of thanks from Leopold for helping facilitate its publication.<sup>50</sup>

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<sup>46</sup> NL to Joseph Ragen, 18 Sep. 1940, NFL at CHM, box 1, folder 9.

<sup>47</sup> *Night Line*, moderated by Walter O'Keefe, WMAQ, NBC Radio, 18 June 1957, transcript in NFL at CHM, box 28, folder 1.

<sup>48</sup> Ragen, "Why I Believe in Leopold;" Parole Board Stenographic Report, 12 June 1958, LLC at NWU, box 3, folder 9, p. 30.

<sup>49</sup> Joseph Ragen to Tim Seldes, 13 Dec. 1957, LLC at NWU, box 24, folder 3.

<sup>50</sup> NL to Joseph Ragen, 16 Feb. 1958, LLC at NWU, box 5, folder 3.

By the end of the parole campaign, however, Leopold and Ragen's relationship had begun to show some strain. After Leopold's parole had been granted but before his actual release, Ragen sent Leopold into solitary confinement after Leopold used Gertz to send out letters of thanks to people who had helped him. Leopold had enjoyed similar special dispensations on mail rules in the past, but had not gotten Ragen's express permission that time. Gertz recalled of the incident: "He [Ragen] had said that if Leopold ever got into much difficulty it would be because of his tendency to take too much for granted."<sup>51</sup> Perhaps Ragen was beginning to feel uncomfortable about his relationship with Leopold; not long after the mail incident, Ragen made it clear in "Why I Believe in Leopold" that, contrary to rumors, Leopold did not enjoy special privileges or ghostwrite any of Ragen's speeches.<sup>52</sup> Still, Ragen and Leopold remained on cordial enough terms thereafter that in 1964 Leopold asked Ragen if he would like to meet for dinner while Leopold was traveling through the Chicago area, and even offered to meet Ragen at Joliet if necessary.<sup>53</sup> The two men might never have quite become friends – the circumstances of their relationship could have precluded that even if their personalities had not – but one would not generally expect such an enduring and cordial relationship between a warden and the man formerly under his charge.<sup>54</sup>

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<sup>51</sup> Gertz, *HOC*, 113.

<sup>52</sup> Ragen, "Why I Believe in Leopold," 15.

<sup>53</sup> NL to Joseph Ragen, 10 May 1964, NFL at CHM, box 16, folder 18.

<sup>54</sup> A prisoner at Stateville, Gene Lovitz, did not think that Leopold and Ragen got along and that Leopold avoided the warden. After he left prison, Leopold's letters to a fellow ex-con about Ragen indicate hostility to the warden as well. None of this information is surprising, however, given the inevitable tensions of their relationship. Higdon, *Crime of the Century*, 307. NFL at CHM, box 6, folder 10.

LEOPOLD'S SUPPORTERS IN THE PRESS Leopold probably had more

allies among the press than any other profession. Jacob Siegel of Chicago's *Jewish Daily Forward* considered himself one of Leopold's biggest boosters.<sup>55</sup> At Leopold's request, Siegel published a letter from Leopold urging readers to write letters on Leopold's parole to Governor Stratton, and later, also at Leopold's request, Siegel pointed readers towards two prominent editorial pieces in other publications which Leopold wanted to receive exposure.<sup>56</sup> Walter Trohan of the *Tribune* and Irv Kupcinet of the *Sun-Times* were both long-time allies of Leopold's; after Leopold's release Kupcinet even offered Leopold help in marketing the movie rights for *Life Plus 99 Years*.<sup>57</sup> In May 1957, Howard Mayer of the *Tribune* did not yet know what his paper's stance would be towards Leopold's July application, but helped Leopold handicap his prospects with other papers and weigh their relative importance to the Governor. Mayer, demurred, however, from appearing at Leopold's hearing and testifying on his behalf, feeling that an appearance "could be badly misinterpreted."<sup>58</sup> He sent a letter instead, on Leopold's assurance that "such a letter would be from you as a friend and a citizen of the community, rather than in your professional capacity. It need not be written on your business stationery," one of Leopold's favored means of cajoling such letters from people who might otherwise have felt it inappropriate.<sup>59</sup>

Gertz singled out Marcia Winn at the *Chicago Daily Tribune* as being one of the journalists, along with John Martin and Gladys Erickson, whose work contained "careful, meticulous, scholarly attention to facts," by which Gertz meant that they had

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<sup>55</sup> Leo Lerner to NL, 21 Mar. 1958, NFL at CHM, box 14, folder 14, p. 3.

<sup>56</sup> NFL at CHM: box 35, folder 2.

<sup>57</sup> NFL at CHM, box 15, folder 18.

<sup>58</sup> Howard Mayer to NL, 29 May 1957, NFL at CHM, box 35, folder 2.

<sup>59</sup> NL to Howard Mayer, 22 May 1957, NFL at CHM, box 35, folder 2.

all expressed agreement with his and Leopold's side.<sup>60</sup> Winn did not have as close a relationship with Leopold as did Erickson or Martin; Winn and Leopold became acquainted too late for her to be considered as a coauthor for *Life Plus 99 Years*. But she published a front-page interview with Leopold in March 1957 that essentially allowed him to articulate the normality narrative at length, with supplementary discussions from Winn that reinforced his assertions. Leopold loved the article, and asked Winn to consider making her personal feelings about his parole known in her future coverage. A month before the clemency hearing, she followed up on the interview with an explicitly subjective piece declaring her personal conviction that Leopold should be paroled. She wrote Leopold when she could not cover the actual hearing, but assured him that the *Tribune's* coverage would be fair.<sup>61</sup>

Not counting instances in which his cooperation with reporters was clear, like the Erickson and Winn interviews or the syndication of his life story, Leopold's deepest collusion with the print media was probably with Leo Lerner and Leo's son Robert. Leo was a powerful ally to have; he was the president of the Chicago Northside Newspapers, a syndicate of local Illinois weeklies that focused on community coverage, with a collective circulation in the hundreds of thousands. He was also prominent as a social and civic reformer, so much so that he was appointed to the parole board about five years after he aided Leopold's media campaign for parole.<sup>62</sup> Like many of Leopold's allies in the press, Leo was first drawn into the case

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<sup>60</sup> Parole Board Visitors Report, 5 Feb. 1958, 127.

<sup>61</sup> NFL at CHM, Box 35, Folder 2: NL to Marcia Winn Morgenstern, 7 May 1957; Marcia Winn Morgenstern to NL, 23 May 1957; Marcia Winn [Morgenstern], "Should Leopold be Paroled?" *Chicago Daily Tribune*, 2 June 1957, pp. F 8-9.

<sup>62</sup> Syracuse University, "Biographical History," in *Leo A. Lerner Papers: An Inventory of his Papers at Syracuse University*, Special Collections Research Center, Syracuse University Library, [http://library.syr.edu/digital/guides/l/lerner\\_la.htm](http://library.syr.edu/digital/guides/l/lerner_la.htm); The inventory lists Lerner's circulation as 219,000

through the networking of Leopold's supporters, in this case Ralph Newman and Mike Lebold in 1952.<sup>63</sup> Lerner and Leopold were not in significant contact for another five years, when Nathan's release once again became an imminent possibility and he wrote to Leo in May 1957, about two months before the July hearing to request another letter, along with a more substantial favor.

Nathan complained that the people against his parole were far more vocal than those who supported it, and to offset the disparity he wanted Leo to do something to elicit the opinions of the "more charitably inclined" before his clemency hearing.<sup>64</sup> As with Siegel at the *Jewish Daily Forward*, Leopold – who was immersed in acquiring individual letters favoring his parole – wanted Leo to run a petition or something similar that would allow him to gather quantifiable expressions of support for his release *en masse*. Leo declined, but the following month Robert Lerner visited Leopold to gather material for a story about rehabilitation in prison.<sup>65</sup> Robert continued to cover Leopold's campaign for release, and became so invested in seeing Leopold succeed that, according to his father, he considered the board's decision to parole Leopold a personal victory.<sup>66</sup> In September 1957, while Leopold was waiting for the board's decision on whether or not to hold a rehearing on his parole, Leo again denied Leopold's request to publish a petition, but ran a readers' opinion poll that ran for several weeks in October instead.<sup>67</sup>

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years before the syndicate reformed in 1949 as the Northside syndicate, after which circulation continued to expand up until 1957, when Leopold and the Lerner worked together.

<sup>63</sup> NL to Leo Lerner, 26 May 1957, NFL at CHM, box 35, folder 2.

<sup>64</sup> NL to Leo Lerner, 26 May 1957, NFL at CHM, box 35, folder 2, p. 2.

<sup>65</sup> NFL at CHM, Box 35, Folder 2: NL to Leo Lerner 10 June 1957; Leo Lerner to NL, 6 June, 1957.

<sup>66</sup> Leo Lerner to NL, 21 Mar. 1958, NFL at CHM, box 14, folder 14.

<sup>67</sup> NFL at CHM, Box 35, Folder 2: NL to Leo Lerner, 5 Sep. 1957; Leo Lerner to NL, 10 Sep. 1957.



The Lerner syndicate's *Sunday Star* provided entry blanks that readers could clip, fill in, and submit for tabulation on the promise that the final results, whatever they were, would be sent to the governor and the parole board.<sup>68</sup> On the surface, a poll that invited readers to vote against Leopold as well as for him seemed more disinterested than would have been a call issued exclusively to Leopold's supporters, but the poll was always intended to further Leopold's agenda. Robert Lerner was in constant communication with Gertz while the poll was running with day-by-day statistical breakdowns that kept Gertz abreast of trends in the polling.<sup>69</sup> Robert was optimistic going in that perhaps as many as 70 percent of the ballots would favor Leopold, and the final result turned out to be more than 84 percent in Leopold's favor.<sup>70</sup> Gertz thought that the show of support single-handedly brought one parole board member, Joseph Novotny, over to Leopold's side.<sup>71</sup> Gertz even claimed years later that the poll was his idea, put into action when he approached his "boyhood friend" Leo Lerner about it.<sup>72</sup>

The poll was not exactly what Leopold had asked for, but it might actually have been a more effective instrument than a public petition or letter writing initiative. First, the element of choice made the popularity of Leopold's parole seem more apparent, with a clear contrast between the people for Leopold's release relative to the people against it. Second, the oppositional nature of the poll helped to generate

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<sup>68</sup> "Should Leopold be Freed?" *Sunday Star*, 29 Oct. 1957.

<sup>69</sup> Robert Lerner to Gertz, ca. 15 Oct. 1957, LLC at NWU, box 24, folder 1.

<sup>70</sup> Robert Lerner to EG, 16 Oct. 1957, LLC at NWU, box 24, folder 1; Robert Lerner, "Vote Leopold New Hearing in February," *Sunday Star*, 17 Nov. 1957; Robert Lerner to EG, 16 Oct. 1957, LLD at NWU, box 24, folder 1; the postmark date is 16 Oct., although a pencil mark reads 19 Oct.

<sup>71</sup> Gertz, *HOC*, 34.

<sup>72</sup> Gertz, *HOC*, 33-34; Leopold commented to Ralph Newman, after reading *HOC*, that Gertz had a tendency to inaccurately claim exclusive credit for ideas, so one should meet Gertz's comments about the Lerner poll with skepticism. NL to RN, 29 May 1965, NFL at CHM, box 15, folder 24.

public discussion over the propriety of Leopold's release, one in which Leopold's supporters were a recognized constituency. Third, a news feature focusing on Leopold's parole as a debate topic was more likely to arouse strong opinion than a straightforward news story about some mundane detail of the progression of Leopold's legal case. Robert Lerner had expected to receive 200-300 entries in the survey. The final total was around 1,100.<sup>73</sup> Fourth, and perhaps most importantly, by soliciting voluntary poll submissions, the Lerner Poll encouraged Leopold's supporters to become personally invested in their stances on the case. When the board voted to rehear Leopold's parole application a few weeks after the poll concluded, Robert Lerner turned the Board's decision into a victory for the *Star's* readers: "The first objective of the Lerner Newspapers' Leopold Poll has been achieved." The implication was that, once the readers had collectively chosen to support Leopold, they had a stake in seeing their cause advance.<sup>74</sup>

The Lerner poll was unique in its scale, but many papers focused on the public's opinion of Leopold, further enhancing his status as a media personality. Chicago papers had first begun soliciting readers' opinions of the Leopold-Loeb case in 1924, and Leopold's parole was the basis for "man on the street" features as far back as 1953.<sup>75</sup> Gertz credited his inspiration for the Lerner poll to a very similar effort by the *Daily Calumet*, a paper headquartered not far from where Bobby Franks's body was found.<sup>76</sup> Most papers probably did not share in the Lerner's desire to advance one side or the other of the debate. They instead emphasized the public

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<sup>73</sup> Robert Lerner to EG, postmarked 16 Oct. 1957, LLD at NWU, box 24, folder 1; Leo Lerner to John Bookwalter, LLC at NWU, 7 Nov. 1957, box 4, folder 2.

<sup>74</sup> Robert Lerner, "Vote Leopold New Hearing in February."

<sup>75</sup> *Chicago Herald American*, 22 Jan. 1953.

<sup>76</sup> Gertz, *HOC*, 33-34.

mood towards Leopold's parole simply because it was good for business – Robert Lerner estimated that the poll boosted his circulation by 11,000 – but they nonetheless contributed to the buzz surrounding Leopold's possible parole.<sup>77</sup>

Nationally, newspapers tried to nurture a sense of local involvement in Leopold's parole by emphasizing it as an administrative referendum on crime and punishment whose outcome affected every American, not just those in Illinois. Editorials and letters to the editor from local readers helped to emphasize the topic as a local issue, and papers took virtually any opportunity to connect the case directly to their community. News that Leopold might relocate to Hawaii if he were paroled made the front page of the *Honolulu Advertiser*.<sup>78</sup> Another popular method was to compare the papers' home state laws and attitudes with Illinois's adjudication of Leopold's case.<sup>79</sup> The *Cleveland News* showed an enterprising spin when it held an essay contest inspired by Leopold's parole which was only open to inmates of an Ohio state correctional facility.<sup>80</sup>

Reinforcing the idea that Leopold's parole was a burning moral and social question made for good copy. Newspapers could fuse a sensational story with a hot social topic, and thereby package the story as an important criminal justice issue. They could thereby encourage their readers to believe that interest in Leopold constituted a "social responsibility" instead of fodder for a voyeuristic appetite. The *Christian Science Monitor* declared that "in the Leopold parole issue is wrapped up

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<sup>77</sup> Lerner to EG, postmarked 16 Oct. 1957, LLD at NWU, box 24, folder 1.

<sup>78</sup> "Thrill Killer Offered Isle Job," *Honolulu Advertiser*, 21 Feb. 1958.

<sup>79</sup> For examples, see: "Pardoning Nathan Leopold," *Wabash, Indiana Times*, 24 July 1957; "Guinea Pig wants Out, Monroe," *Louisiana Daily World*, 23 July 1957; "Picked Wrong State," *St. Mary's, PA Free Press*, 31 July 1957; "Inconsistent Policies," *The Oregonian*, 17 Aug. 1957.

<sup>80</sup> "News Aims Essay Contest at Crime," *Cleveland News*, 18 Jan. 1958.

almost the whole tangle of arguments concerning what courts and the state should seek to do with lawbreakers.”<sup>81</sup> The *Battle Creek Enquirer & News* in Michigan was even more explicit in preemptively assuaging its readers’ shame about wanting to know the details of the case: “Some persons may be inclined to...[condemn] the type of person who seems to thrive on the vicarious thrills of a murder case. But second thoughts must convince everyone that this case represents more than just the average appeal to a parole board.”<sup>82</sup>

#### LEOPOLD’S FINAL PETITION FOR RELEASE, JULY 1957 AND FEBRUARY 1958

The appeal to which the *Enquirer* referred was Leopold’s gubernatorial clemency petition, at which the board was to decide whether to recommend for or against a pardon for Leopold to Governor Stratton. The recommendation was not binding, but it was a strong influence on the Governor’s final decision, and the hearing was Leopold’s first attempt, with Gertz’s critical assistance, to bring all that he had assembled outside of his formal proceedings to bear on one of the those proceedings. Leopold’s side pled its case to the board on July 9, 1957.

Most of the formal testimony came from character witnesses who reiterated the basic tenets of the normality narrative. JB Rice, a doctor who worked on the malaria project named, spoke of Leopold’s contributions to the experiment and, briefly, on the philosophical purposes of prison, which he did not think would be furthered by keeping Leopold incarcerated. Three other witnesses had been familiar with Leopold since before his arrest, and testified to the causes of the crime and the

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<sup>81</sup> James Sparkman, “The Leopold Parole Issue: An Intimate Message from an Undecided State,” *Christian Science Monitor*, 30 July 1957.

<sup>82</sup>“Leopold’s Bid for Freedom,” *Battle Creek, Michigan Enquirer & News*, 17 July 1957.

changes Leopold had undergone in prison. All three testified that Leopold's collusion with Loeb was the result of weakness, insecurity, immaturity, emotional trouble, and bad judgment, and assured the board that Leopold had outgrown the problems of his youth to become a psychologically sound man. One, Abel Brown, dedicated the bulk of his testimony to depicting Loeb as a sadist who was clearly the primary actor behind the Franks murder.<sup>83</sup> The final witness was novelist Meyer Levin, who had become a kind of *de facto* expert on the case following the success of *Compulsion*, his 1956 *roman à clef* of the events of 1924. Leopold did not like Levin or approve of his book, but Levin was a well-recognized name who openly supported Leopold's parole, and in spite of Leopold's animosity, much of Levin's book could be read as a reinforcement of the normality narrative.<sup>84</sup>

A few weeks after the hearing, Stratton followed the board's recommendation to deny Leopold clemency.<sup>85</sup> In spite of the setback, Leopold filed again, this time for a parole hearing that the board held in on February 5, 1958. Three dynamics at the February hearing played in Leopold's favor. First, Leopold could keep trying varying routes to freedom until one of them worked; he only needed to succeed once, while the people who wanted to keep him incarcerated needed to win every time. And the speed of Leopold's transition from pursuing clemency to pursuing parole after the July petition made it clear that he intended to keep the pressure on. The board had tried to stave off some of Leopold's attempts at freedom by issuing him a twelve-year continuance in 1953, meaning that he would not get another parole hearing until

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<sup>83</sup> Parole Board: Visitors Heard on Behalf of Prisoner, 9 July 1957, (LLC at NWU) box 3, folder 7.

<sup>84</sup> Parole Board: Visitors Heard on Behalf of Prisoner, 9 July 1957, (LLC at NWU) box 3, folder 7, pp. 30-37.

<sup>85</sup> "Leopold Denied Freedom," *Scranton, Pa. Times*, 31 July 1957.

1965. But Leopold had responded by petitioning for a rehearing in late 1956, then for gubernatorial clemency six months later, then for rehearing again about six months after that. In effect, these applications raised the same questions about his case as would have the straightforward parole hearings that the board had sought to preempt in 1953.

Second, Governor Stratton was aware when he denied clemency that Leopold would get another bite at the apple through parole, and tacitly but publicly endorsed Leopold's pursuit of that recourse.<sup>86</sup> Stratton might simply have been shifting responsibility to the parole board, but he privately passed word to Leopold that he supported the parole application.<sup>87</sup> And in any event, Stratton publicly made it clear that he did not consider Leopold's case closed, as he readily could have done by speaking out against parole as an option, which would have encouraged the board to deny Leopold's petition.

The third element working in Leopold's favor was that parole was a less dramatic avenue than pardon. Under a pardon, the governor would have effectively declared Leopold a special case and granted him an unconditional release. Parole was a far more common and conventional avenue for prisoner release, and it would have left Leopold under the continued supervision of the parole board and the stipulations the board assigned to his release for at least five years. The board's ability to approve Leopold's living conditions, travel, occupation, and other aspects of his daily life could offset many people's concerns about letting him leave the strict monitoring of

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<sup>86</sup> When Stratton publicly announced that he was denying Leopold clemency, he pointed out somewhat unnecessarily that Leopold could still file for parole; "Await Parole Board Action on Leopold," *Chicago American*, 14 Nov. 1957.

<sup>87</sup> Walter Trohan to NL, 15 Nov. 1957, LLC at NWU, box 5, folder 2.

Stateville, making parole a compromise between gubernatorial clemency and endless incarceration. In that sense, Leopold's vigorous attempt at clemency could almost be viewed as a strong opening bid, and the subsequent parole petition a more mutually acceptable fallback position that would still let Leopold accomplish his end of leaving prison.

The July hearing also helped to lay the foundation for February's strategy and approach. Soon before the February hearing, Leopold commented to a friend that, if his parole were granted, he would view the clemency hearing as the real turning point for his freedom, and success in February as a delayed result.<sup>88</sup> Leopold's past petitions had been conventional and subdued, involving little more than filing the necessary paperwork and undergoing an interview before the board. In July, he and his allies courted the press and sought out evidence that a decision in Leopold's favor would not be as unpopular as the board members have might feared. In so doing, Leopold authorized and employed methods that attracted attention to his case and demonstrated his growing sense of independence from, or at least defiance of, his family's wishes, an important watershed for his and his supporters' efforts in February.<sup>89</sup>

But if July was a turning point because of the nature of Leopold's strategy and the headway he gained towards his eventual release, then February was a turning

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<sup>88</sup> NL to Abel Brown, 1 Feb. 1958, LLC at NWU, box 5, folder 3.

<sup>89</sup> NL to Sam Goldfarb, 28 Apr. 1957, NFL at CHM, box 35, folder 1. In 1953, Mike Lebold had expressly forbidden Leopold from letting Samuel Goldfarb, an acquaintance of Leopold's from the University of Chicago, implement a mass mail campaign to solicit letters. Mike had feared it would attract excessive attention. In April 1957, Leopold asked Goldfarb to move forward with the plan, explaining that since his brother Sam was exerting less control as patriarch than had Mike, Leopold, was taking a greater hand in his own affairs, and wanted Goldfarb to move forward. Leopold made it clear to Goldfarb that Goldfarb need only commute with Leopold on the matter, and leave Sam out of it.

point because of the scale on which Leopold's side worked. Elmer Gertz's participation had provided the last element Leopold needed in order for his publicity campaign to reach its full potential. Gertz handled most of the formal presentation before the parole board in July, including the closing statement, though he had technically been second chair to Adams. After Stratton denied Leopold clemency, Gertz officially became Leopold's sole formal counsel, with the time and the authority to begin preparing for the parole hearing as he and Leopold saw fit. Gertz's approach to the case was the legal equivalent of saturation bombing. He left no known argument or evidence for Leopold's release unexploited for the formal hearing while trying to mobilize forces and individuals outside of the official proceedings as much as possible to overpower the board's resistance.

The content of the evidence Gertz provided, and the arguments he put forth, however – either directly or through witnesses and supporting documents – were mostly unsurprising. The reintroduction of the materials from July freed Gertz to call witnesses that would build upon rather than reestablish the clemency hearing. Helen Williams – the teacher whom Leopold knew through his work on the correspondence school who had testified in 1953 – and Leopold himself were the only witnesses from whom the board had previously heard testimony in the case, and Leopold had little new to say to the parole board in his prepared presentation. He simply reiterated the explanations for his crime and the subsequent changes to his personality that corresponded very closely – in some cases verbatim – to sentiments he had been expressing since 1953. Most of the remaining testimony came from people like Williams, Father Eligius Weir, a former prison chaplain whom Leopold had



befriended during his incarceration, or Ralph Newman, who performed character witness functions similar to the witnesses from the July clemency hearing.

Collectively, they all repeat the conventional arguments for an inmate's release: that the inmate's development of good character was established by both his actions in prison and the change in his personality, that he would not repeat his crime, that he had the resources and support to live on the outside, and other fairly conventional assertions related to an inmate's parole.

Gertz did not repeat the practice from July of calling multiple witnesses who knew Leopold before his incarceration. Leopold's brother Sam – who had agreed to appear before the board only after much cajoling and whose prepared statement affirming Leopold's rehabilitation showed a noticeable lack of emotion – was the only one.<sup>90</sup> Otherwise, all of the testimony came from people like Ralph Newman, who vouched for the Leopold they knew as an adult, rather than describing the changes he had undergone since 1924 to become that adult.<sup>91</sup> The most famous witness, historian and poet Carl Sandburg, talked to the parole board of the importance of humanity and releasing Leopold in spite of the people who would oppose it, but his real contribution on at the hearing seems to have been his celebrity.

While Sandburg was the most famous, the “star witness,” according to Gertz, was John Bartlow Martin. Martin testified in the mode of an expert on the case and on rehabilitation and parole rather than as a personal acquaintance of Leopold's.<sup>92</sup> Martin provided a summary and analysis of the crime that essentially repeated the *Saturday*

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<sup>90</sup> Information about Samuel Lebold's reluctance to testify can be found in *HOC*, 37-38. His testimony is in the Parole Board Visitors Report, 5 Feb. 1958.

<sup>91</sup> Other character witnesses in February were Father Eligius Weir, Helen Williams, and Stateville physician JF Pick.

<sup>92</sup> Gertz, *HOC*, 63.

*Evening Post* series that had angered Leopold for what he saw as its coverage of 1924, but with even more explicit analyses of Leopold and Loeb's sexual relationship. Otherwise, like the *Post* series, Martin's testimony represented Leopold's ideal conception of the normality narrative, delivered with a journalistic detachment. Martin cited criminological research to the effect that the passage of time was the most effective factor in alleviating criminal tendencies, and argued on that basis that Leopold was no longer a psychopath because he could abide by rules. Leopold was also a good parole risk, according to Martin, because "he has no record of adult homosexuality in prison," equating that absence with Leopold's rehabilitation and thereby reinforcing the perceived connections between Leopold's sexuality and criminality. Martin closed with the oft-invoked notion that because of the press and the public's attention to him, "Leopold making good on parole would do more to advance the cause of parole than all the other convicts who will come before you this year put together."<sup>93</sup>

The only arguments for Leopold's release that were unique to February were those related to the media and public opinion. A section of Leopold's formal parole petition featured a lengthy discussion of the press coverage of his case headed "Public Opinion and Nathan Leopold." In it, Leopold asserted that since 1945, public opinion had shifted overwhelmingly in his favor. The discussion served to introduce the voluminous letters Leopold submitted in support of his parole, including the letters Leopold and Gertz had solicited directly from newspaper reporters and editors in the Chicago area. Gertz also submitted scrapbooks to the Parole Board on other convicts who had been recently paroled, so that the board members could understand the

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<sup>93</sup> Parole Board Visitors Report, 5 Feb. 1958, p. 41, 43.

trends in press attitudes towards parole.<sup>94</sup> Gertz proceeded in his presentation with only a thin pretense that the parole board was insulated from the press coverage of the case, diplomatically telling the board that he did not think it would be swayed by public opinion, but wanted to establish that “society is ready for him [Leopold].”<sup>95</sup>

Gertz did as much as he could to ensure that the press coverage would buttress their assertions, his actions serving as a fitting complement to Leopold’s cooperation with certain reporters. Gertz employed news clippings services to let him monitor the editorial stances on Leopold in local papers all over the country, but he and Ralph Newman took a more proactive approach towards the Illinois press.<sup>96</sup> They spent the months leading up to the hearing forging connections with reporters, and as the hearing grew nearer they began cashing in on those relationships. More than once, Gertz confronted an editor at the *American* to dissuade the paper from negative coverage – aside from Erickson’s pieces, the paper was resolutely against Leopold – and was satisfied with the result.<sup>97</sup> In October, when the board was getting ready to decide whether or not to rehear Leopold’s case, Gertz asked AT Burch at the *Daily News* to run an editorial calling for the board to solicit Ragen’s testimony, which Gertz wanted but Ragen could only offer at the board’s request (Ragen did not testify).<sup>98</sup> And only days before the hearing, Gertz gave Jack Mabley, also at the *Daily News*, tips that he thought would undermine the position of Benjamin Adamowski, the district attorney who formally opposed Leopold’s parole at the

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<sup>94</sup> The scrapbooks are now in NFL at CHM.

<sup>95</sup> Parole and Pardon Board Visitors Report, 5 Feb. 1958, 129-130.

<sup>96</sup> These clippings are now in the LLC at NWU.

<sup>97</sup> Gertz, *HOC*, 40-41; Elmer Gertz to Stuart list, 18 Nov. 1957, LLC at NWU, box 5, folder 2.

<sup>98</sup> EG to AT Burch, 25 Oct. 1957, LLC at NWU, box 5, folder 2.

February hearing. Gertz made the circumstances of his information clear: “you may use these things if you do not state that they came from me.”<sup>99</sup>

#### THE PAROLE BOARD’S POSITION

Based on the members’ questions, the parole board does not seem to have been impressed by journalists’ good opinion of Leopold as much as it was disconcerted by the press’s interest at all. The board’s political dynamics made the body averse to publicity, whether it was good or bad. It was especially averse in Leopold’s case, more so than ever by the February parole hearing. Board members were gubernatorial appointees, not elected officials, and the governor usually appointed prominent citizens to the post, rather than career criminal justice professionals. Officials could stay on through the administration of two different governors, but they served at the sitting governor’s pleasure, as was demonstrated by the restructuring of the Board under Governor Stratton in 1953 that had led to Leopold’s twelve year continuance. The board therefore did not need publicity to convince voters to reelect them, while scrutiny of their decisions by either the governor or the press could affect them negatively.

These circumstances created an incentive to avoid the spotlight and maintain the status quo. If the board made a popular high-profile decision, its members gained nothing more than leave to continue discharging their duties as they had been. If the board made a high-profile decision that aggravated the public, or even just a particularly vocal or powerful subsection thereof, its members risked mass opprobrium and the governor’s anger. The board’s votes were secret, providing

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<sup>99</sup> EG to Jack Mabley, 11 Feb. 1958, LLC at NWU, box 5, folder 3.

members with some cover on their individual decisions, but that secrecy also emphasized each individual member's responsibility for the board's collective actions. Leopold's press initiative thus put the board in a difficult position. He had managed to make his release into a movement among many prominent people and much of the Illinois press, and in doing so he had aroused a strong backlash from people who wanted him to serve his sentence in full. Such masses of public sentiment for and against Leopold's parole ensured that some segment of the population would be angered by the board's decision no matter what the board decided.

The tensions surrounding both the July and February hearings were exacerbated by their coincidence with two other hearings about a famous Stateville convict. Roger Touhy was a prohibition-era gangster who had been in prison for kidnapping since 1933, in spite of substantial evidence that he had been framed, and who had famously escaped from Stateville in 1942. Touhy was a favorite subject for the press in his own right, and in a strange turn of events, Stratton granted Touhy a reduced sentence for the escape in the same round of applications as Leopold's failed July petition, and Touhy received parole in the same round of applications as Leopold's February petition (though Touhy did not actually leave prison until 1959 because of another sentence). The coverage of Touhy's attempts at parole at the same time as Leopold's compounded the public's interest in, and scrutiny of, the parole board's decisions. The board therefore went into the February parole hearing extremely concerned with tamping down the public fervor that Leopold and his allies had been instrumental in generating. And to tamp down that fervor, the board needed to find a decision that would neither earn praise nor indignation from Leopold and his

supporters. It needed a decision that would end the matter once and for all, and as quietly as possible. That concern was very much in evidence in both July 1957 and February 1958, but especially February, when Newman and Gertz helped Leopold implement his publicity strategy to the fullest.<sup>100</sup>

The board's questions in February demonstrate a greater interest in Leopold's efforts to transition from notoriety to celebrity – and how he might further his celebrity if the board validated his assertions of rehabilitation by letting him go – than with Leopold's crime or his prison record. Board member Robert Branson asked Leopold whether, if released, he intended to lecture, write, or otherwise cash in as an authority on his own crime. Leopold answered each question with a resounding no. Board chairman Franklin Stransky subsequently asked if, whatever Leopold's declared intention not to continue as a public figure, he would be able to resist the “tremendous inducements” there would be to capitalize on his public recognition. Leopold assured him that “that would be the worst thing in the world...All I want, if I am so lucky as to ever see freedom again, is to try to become a humble little person.” He told the board that he had never wanted any of the publicity he received and could not wait for the opportunity to escape it. He claimed not to understand what it was that drew the media to him, particularly why his parole triggered the same kind of fascination among it that his crime had in 1924. He did not mention the efforts he had made to court much of that publicity in recent years.<sup>101</sup>

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<sup>100</sup> Robert Howard, “Gov. Stratton Cuts Touhy's Escape Term,” *Chicago Daily Tribune*, 1 Aug. 1957; “Parole for Leopold and Touhy,” *Chicago Daily Tribune*, 21 Feb. 1958; John Touhy, *When Capone's Mob Murdered Roger Touhy*, (Fort Lee, NJ: Barricade, 2001).

<sup>101</sup> Parole Board Stenographic Report, 5 Feb. 1958, LLC at NWU, box 3, folder 6, pp. 8-9, 15.

The serialization of *Life Plus 99 Years* in the *Chicago Daily News* was a particular sticking point with the board, and one that prompted Leopold to engage in an outright lie. The *Daily News* began syndication of the excerpted memoir on November 4, which coincided closely with the board's decision whether to rehear Leopold's case. Board members John Bookwalter and Joseph Novotny each asked what part Leopold had had in selling the serialization rights. Novotny, whose questions came after Bookwalter's, was specifically concerned with the serialization's timing. Leopold declared his hatred for the serialization and said that he had no control over its content because in his contract with Doubleday he had ceded those rights, which was true. He also claimed to have had no input on the timing of the serialization, which was not.<sup>102</sup>

Several months before the parole hearing, Leopold and his editor at Doubleday, Tim Seldes, had a disagreement over the timing of the syndication's release because, as Leopold told Ralph Newman, "what I want more than anything is to gear the appearance of the book, or at least its ... serialization, to my next efforts to obtain parole."<sup>103</sup> Leopold had signed with Doubleday too late to coordinate the book with his clemency petition, but he hoped to be able to use it, or the syndication, to his benefit for the parole hearing. Leopold knew that his own desires for the timing of the syndication were not ideal from a marketing point of view, but wrote to Seldes that "I understand that Doubleday was willing to forego this optimum timing in view of the possible impact of getting something on the street upon my attempt for rehearing and

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<sup>102</sup> Parole Board Stenographic Report, 5 Feb. 1958, p. 18, 21.

<sup>103</sup> NL to Ralph Newman, 13 May 1957, NFL at CHM, box 28, folder 1.

parole.”<sup>104</sup> A rescheduling of Leopold’s parole hearing rendered the question moot, and in the end Doubleday might well have been solely responsible for the serialization’s timing. But Leopold’s statements to the board that he was in no way involved in the syndication were misleading at the very least, and tellingly, the syndication did happen at a critical moment for Leopold, instead of three weeks before the release of the book, which had been Seldes’s original preference.<sup>105</sup> Leopold was, however, able to reinforce his claims with a letter from an editor of the *Daily News* avowing that “Leopold had nothing whatsoever to do with the sale of the material to us. In fact we didn’t even discuss the subject in any way with either him or his attorney,” which might well have been true as far as the newspaper editor was concerned; Leopold’s arguments had been with Seldes.<sup>106</sup>

The biggest piece of evidence against Leopold’s influence on the serialization was its content. The excerpts focused on exactly the elements of his life that Leopold wanted to receive the least attention, and excised many of the elements he would have wanted emphasized. The serialization became a hit. Some newsstands ran out of copies of the first *Daily News* installment, and several other papers syndicated it as soon as the *News*’s exclusive premiere rights had been honored.<sup>107</sup> Within a year, it had run in Britain, Germany, and Norway, and a Spanish language version came late

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<sup>104</sup> NL to Tim Seldes, 27 Aug. 1957, NL at CHS, box 43, folder 11.

<sup>105</sup> NL to Tim Seldes, 27 Aug. 1957, NL at CHS, box 43, folder 11; Tim Seldes to NL, 9 Sep. 1957, NFL at CHM Box 28, Folder 1.

<sup>106</sup> Everett Norlander to Mr. Stransky, 4 Nov. 1957, LLC at NWU, box 5, folder 2.

<sup>107</sup> Tim Seldes to NL, 7 Nov. 1957, LLC at NWU, Box 24, Folder 2; Tim Seldes to NL, 15 June 1958, LLC at NWU, box 27, folder 3.



in 1959. In spite of Leopold's best efforts and deepest wishes, people continued to be most interested in the elements of his life upon which he least wanted to dwell.<sup>108</sup>

Leopold's stated ambition to go to Puerto Rico greatly helped him to assuage the parole board's concerns about future publicity. Leopold had a job offer as an x-ray technician from a Christian organization called the Church of the Brethren, who wanted as a matter of principle to help him build a new life. The job provided room, board, and a small monthly wage in a village named Castañer. When Board Member Joseph Carpentier asked Leopold if he thought Puerto Rico would let Leopold achieve his stated desire to "get lost," Leopold replied that he thought newspaper publicity would be much less in Castañer, eighty miles from the nearest large city, than if he went to a major American city like Chicago or New York. "Puerto Rico will accept me. They probably know less about the details, have had less of the constant details of publicity over these thirty-three years...I hope perhaps after a few weeks, or certainly a few months after my release people would forget about me and I could live a normal life, not in the spotlight."<sup>109</sup>

John Bookwalter was probably the board member most interested in exploring Leopold's claims of rehabilitation. It was Bookwalter who had asked the question Leopold stumbled over so dramatically in 1953, as to precisely why Leopold killed Bobby Franks with Loeb. This time, Bookwalter questioned the litany that Leopold had developed precisely to answer that question. He was not satisfied by Leopold's favored tactic of saying that "it is not easy to try and push blame on a man that is dead" and then doing so anyway. He asked Leopold for details that reinforced

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<sup>108</sup> "EG to NL," 5 Nov. 1957, LLC at NWU, box 5, folder 2. NFL at CHM, box 43, folder 11: Tim Seldes to NL, 18 Apr. 1958; 25 June 1958; 2 Nov. 1959.

<sup>109</sup> Parole Board Stenographic Report, 5 Feb. 1958, p. 14.

Leopold's equal partnership in the murder's commission. And several times over the course of a brief exchange, Bookwalter repetitiously compelled Leopold to bluntly acknowledge that he was as guilty as Loeb.<sup>110</sup> Joseph Carpentier, in the last substantive questions of the hearing, helped Leopold offset any damage by giving him a chance to reiterate that Loeb was the murder's instigator.<sup>111</sup>

#### CONCLUSION – THE RELEASE OF NATHAN LEOPOLD

On February 20, the board announced that it had decided to parole Nathan Leopold. Ragen had a direct phone line to the board's office in Springfield that let him hear the verdict as soon as possible. He provided Leopold, Gertz, and Ralph Newman with a private office at Stateville in which they could await the verdict together. When Ragen learned the board's decision, he called Leopold into his office to pass along the board's decision in private. News media spread word of the decision so quickly that, in spite of their special access, Newman and Gertz first heard that Leopold's parole was granted through the radio.<sup>112</sup>

The board's decision was national, front page news, but after the initial wave of attention to it, the papers had surprisingly little to add. For years, and with a special intensity in the six months since the previous July, the central underpinning of the press's coverage of Leopold had been the hypothetical prospect of his parole. The board obviated that approach in an instant, and suddenly reporters had to adjust to covering the reality of Leopold as a soon to be free man, instead of as a near

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<sup>110</sup> Parole Board Stenographic Report, 5 Feb. 1958, p. 9.

<sup>111</sup> Parole Board Stenographic Report, 5 Feb. 1958, p. 27-28.

<sup>112</sup> Gertz, *HOC*, 110.

legendary prisoner. Leopold did not actually leave prison for another three weeks, during which the press struggled to find a new hook in covering him.

The press's task was made all the more difficult by the relative absence of new information on the case. Leopold could not grant interviews, and the board did not even announce its approval for him to go to Puerto Rico until the day before his release, so there were few solid details on which the press could act.<sup>113</sup> Even Gladys Erickson, who had special access to both Leopold and Ragen, had trouble finding new items to keep her coverage fresh before Leopold's release. At one point, she wrote an entire feature about Leopold getting fitted for his parole suit, using it as a pretext to once again discuss his imminent release.<sup>114</sup> Other reporters used Gertz as a surrogate for Leopold. Leopold's parole was Gertz's victory too, and Gertz was more than happy to revel in his triumph.<sup>115</sup> Otherwise, the primary avenue for new exploration was the location to which Leopold would be paroled, a question the media pursued until the news broke that Leopold would be going to Puerto Rico.<sup>116</sup>

When Leopold finally did walk out Stateville's front gate on March 13, around a hundred reporters were waiting for him.<sup>117</sup> But if they had been waiting for Leopold to begin opening up about his life and his newfound freedom, they were disappointed. The parole board intended to hold Leopold to his word about eschewing the public eye as a part of the price he paid for freedom. The following statement had

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<sup>113</sup> Gladys Erickson, "Leopold's Last Hours in Prison," *American*, 13 Mar. 1958.

<sup>114</sup> Gladys Erickson, "Parole Suit Tailored for Excited Leopold," *Chicago American*, 8 Mar. 1958.

<sup>115</sup> For examples, see: Bob Gale, "Is Leopold Still a Jew?" interview with Elmer Gertz, *The Sentinel*, 17 Apr. 1958; "Gertz a Hero to Family, Neighbors," *Sunday Star*, 23 Feb. 1958; "Classmate-Lawyers worked hard, One for Leopold, Other for Touhy," *Chicago Sun-Times*, 24 Feb. 1953.

<sup>116</sup> "Wait Ruling on Leopold Island Job," *Chicago Daily News*, 4 Mar. 1958; "Miamian Eager to Hire Leopold," *Miami News*, 12 Mar. 1958; "Florida Says no to a Job for Leopold," *Chicago Daily Tribune*, 12 Mar. 1958; "Thrill Killer Offered Isle Job," *Honolulu Advertiser*, 21 Feb. 1958.

<sup>117</sup> Hal Higdon, *Leopold and Loeb: The Crime of the Century* (Urbana, Ill.: U of Illinois P, 1975, 1999), 322.

been taped onto the boilerplate parole agreement, with its own separate signature prompt:

It is a special condition and rule of this parole agreement, in accordance with the prisoner's expressed desires and intentions, that during this parole period, prisoner shall not participate in any publicity activities or personal appearances on stage, radio, motion pictures, television or any other publicity media.<sup>118</sup>

Outside Stateville, Leopold walked up to a waiting microphone and read from a prepared statement in which he assured the press that “that pledge [to the parole board] I will keep to the letter. I will give no interviews to anyone; I will talk to no member of the press, radio, or television.” He pleaded with the press to accept his decision and to cease to give his case such attention: “I appeal...to you... and to society at large to agree that the only piece of news about me is that I have ceased to be news.”<sup>119</sup>

The press did not oblige. Leopold tried to avoid reporters as much as possible between the moment of his release and his departure for Puerto Rico the next day, but they followed him incessantly, seeking out any details that they could use for copy. The car ride from Stateville to Chicago was a virtual high-speed chase, and numerous editors thought it worthy of their papers' front pages that Leopold became carsick several times on the way. He spent the night at a friend's apartment in Chicago, and reporters took over a nearby apartment from which they could stake out the scene. Gertz tried to placate them by agreeing to visit periodically with updates about information such as what Leopold had had for dinner. The very few times that

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<sup>118</sup> Parole Agreement, LLC at NWU, box 3, folder 13, 13 Mar. 1958.

<sup>119</sup> Gertz, *HOC*, 116.

Leopold left the apartment, the press was in tow. He abandoned his plan to visit his parents' graves.<sup>120</sup>

On March 14, Leopold left for Puerto Rico via New York. He had kept to his refusal to cooperate with the press during his brief stay in Chicago, but he was already testing the boundaries of his parole restriction. Gladys Erickson was one of the people who waited with Leopold at O'Hare airport for his flight out of the city. She was careful to note that Leopold had greeted her by making it clear that he was talking to her "as a friend" because to talk to her professionally would be a violation of his agreement. She then wrote up a feature on the wait, quoting from Leopold extensively.<sup>121</sup> A similar loophole was in evidence in a story two days earlier, when she published a feature on Leopold's last hours in prison. Like her feature on waiting at the airport with Leopold, it was not written as an interview, something with which Leopold cooperated. She merely described Leopold's actions and interactions during his last 21 hours at Stateville.<sup>122</sup> Still, Leopold tried for the most part not to give the parole board cause to doubt his commitment to obscurity.

Journalists were waiting for him when he arrived in Puerto Rico, but they found as little purchase with him there as they had in Chicago. Without direct contributions from Leopold, journalists focused on illustrating his life as best they could through observation, describing the locale, his work routine, his work environment, and the events he attended.<sup>123</sup> Third party perspectives – such as Ragen

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<sup>120</sup> Gertz, *HOC*, 117-120.

<sup>121</sup> Gladys Erickson, "Friends See Leopold Off to Puerto Rico," *Chicago American*, 15 Mar. 1958, p. 3.

<sup>122</sup> Gladys Erickson, "Leopold's Last Hours in Prison," *Chicago American*, 13 Mar. 1958.

<sup>123</sup> "Leopold Throwing Himself into Church Hospital Work," *Chicago Daily News*, 21 Mar. 1958; Arthur Massolo, "Nathan Leopold in Puerto Rico," *New York Post*, part I, 17 Apr. 1958, pp. 1, 4, 20; Arthur Massolo, "Nathan Leopold in Puerto Rico," *New York Post*, part II, 18 Apr. 1958, pp. 1, 4, 16.

and Erickson's "Why I Believe in Leopold" or Gertz's assurance to readers of the Jewish *Sentinel* that Leopold was still a Jew in spite of having taken a job with a Christian organization – provided some ways of keeping the story going. One enterprising reporter for the *NY Post* even obtained a copy of Leopold's confidential parole report, possibly from the Governor of Puerto's press secretary.<sup>124</sup> But in all, beginning with the board's decision to parole Leopold and with the sole exception of his actual release from Stateville, the press was finding it harder and harder to stretch out Leopold's newsworthiness.

That difficulty did not mean that Leopold had ceased to be news. Leopold's media campaign for parole relied on him creating a public personality that would make enough people feel like they knew him – and that the Leopold they knew should be paroled – to create a base of public support for his release. But the press and the public were only interested in the public personality Leopold was presenting because of their continuing attraction to the sensationalistic elements of his crime. Leopold refused to discuss some of those elements, such as the actual commission of the murder or his sexual relationship with Loeb. Other elements Leopold talked about only in two-dimensional, canned statements, as he did when it came to his emotional relationship with Loeb and how it led to the murder or his own feelings of remorse years later. Leopold's media strategy thus entailed nurturing an appetite that his self-disclosures could not satisfy. His announcement upon his release that he would no longer be participating in his public life dashed the lingering hope that someday he would finally provide the "full story" of his crime, but the loss of that prospect did

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<sup>124</sup> Arthur Massolo, "Nathan Leopold in Puerto Rico," part I, *NY Post*, 17 April 1958; part II, 18 April 1958; NL to EG, 5 May 1958, LLC at NWU, box 27, folder 2.

not, however, end the public and media's desire to understand Leopold's psyche at the time of the crime. It only furthered the drive, already underway, to look to fictional portrayals as a way of connecting with the details of the crime. In that manner, the explorations into who Leopold was and what drove him would continue without him in the ensuing years, and the fixation on "knowing" Leopold by understanding his true self, which Leopold himself had cultivated in order to get out of prison, would grow beyond his control.

Leopold found it increasingly difficult to remain on the sidelines, living up to his claims to desire anonymity, while other people shaped his life story, and profited from it.

## CHAPTER FIVE

### “A FULLER UNDERSTANDING”: THE SEXUALIZATION OF LEOPOLD AND LOEB IN FICTION, 1948-1959

"It is the myth...which finally concerns us, not the man who has survived it; for the myth has a life of its own."

– Leslie Fiedler<sup>1</sup>

#### INTRODUCTION

While Leopold was working to change the nature of his position in public life with the normality narrative and news media were eagerly resurrecting and revising the Leopold-Loeb case, a number of fictional works adapted the case in novels, movies, and plays. Born out of an impulse to understand the historical Nathan Leopold and Richard Loeb, these fictionalizations worked alongside the nonfictional narratives in redefining the case for the postwar era, and had effects on the case's narrative that continued from that point forward. Most importantly, the fictionalizations of the 1950s completed the transition towards making the Leopold-Loeb narrative into evidence that same-sex sexuality correlated to psychological dysfunction and to dangerous, predatory behavior.

The perception that Leopold's attraction to Loeb was a factor in Robert Franks's murder had formed part of popular perceptions since 1924, but underwent critical changes in the post-World War II era. Leopold and Loeb's relationship started to receive singular focus as a causative element of Robert Franks's murder with

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<sup>1</sup> Leslie Fiedler, "Leopold and Loeb: A Perspective in Time," *No! In Thunder: Essays on Myth and Literature*, (Boston: Beacon Press, 1960), p. 214. Originally published as "Final Thoughts on the Leopold Case," *New Leader*, 17 Nov. 1958.



Leopold's normality narrative. When Leopold attributed his participation in the murder to a youthful psychological maladjustment that made him emotionally dependent on Loeb, he facilitated other adaptations of his and Loeb's relationship towards midcentury perceptions of same-sex sexuality. For Leopold, who was trying to emphasize his rehabilitation, the important thing in his assertions was that he had outgrown that maladjustment. But to people seeking to understand the crime, what mattered more was the idea that one man's attraction for another had created a toxic relationship that caused the death of an innocent boy.

The postwar fictionalizations, like much of the press coverage of the time, furthered that idea. But where journalists often characterized the Franks murder as a sexual crime, works of fiction were more likely to portray sexuality as an indirect rather than direct cause of Robert Franks's murder.<sup>2</sup> They implied not that Robert Franks had been the target of sexual lust, but that Leopold and/or Loeb's sexual attraction to his partner created a dysfunctional relationship that resulted in murder. That supposed correlation was not new to the fictional adaptations, nor even to the Leopold-Loeb case; psychiatrist David Abrahamsen had dissected the relationship between Leopold and Loeb's sexuality and their criminal compulsions in 1944.<sup>3</sup> However, these fictionalizations packaged and disseminated the idea among the public far more effectively than any previous interpretations, including Leopold's. Through them, the perception that same-sex sexuality was a sign of dangerous psychological maladjustment and the *sine qua non* of Robert Franks's murder came to

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<sup>2</sup> "A Thrill-Killer's Appeal," *Springfield [Ohio] Sun*, 3 Aug 1957; "Leopold Denied Freedom," *Scranton, [Pa.] Times*, 31 July 1957; *Paradox of Parole, Mt. Vernon, Ohio News*, 3 Aug. 1957; Enid, Okla. *Daily Eagle*, 5 Aug 1957; "When Mercy Goes Wrong," *Philadelphia Bulletin*, 1 Aug. 1957; "Odd Human Quirks in Leopold Case," *Sioux Falls Argus-Leader*, 1 Aug. 1957.

<sup>3</sup> David Abrahamsen, *Crime and the Human Mind* (New York: Columbia UP, 1944), 166-167.

seem like an intuitive part of the case simply because it was so frequently repeated across so many media. They also instilled the Leopold-Loeb narrative with an adaptability that allowed that narrative, and the warnings about same-sex sexuality it supposedly provided, to become more widespread.

The fictionalized portrayals of the relationship implied that same-sex relationships were inherently pathological, incapable of providing the satisfactions and psychological health of intersexual couplings. They characterized Leopold and Loeb's relationship as homoerotic but not romantic, and indeed represented the two traits as mutually exclusive. Neither of the partners in the fictional renditions felt love for one another, at least not in a manner that was in any way healthy. Rather, like Leopold's own descriptions of his feelings towards Loeb, one participant developed a sexual and emotional dependence on the other so strong that the dependent partner allowed himself to be drawn into a murder. These accounts thereby made it clear that the psychological harms of same-sex sexuality made men dangerous.

### SEXUALITY IN THE POSTWAR FICTIONALIZATIONS

The most important difference in content between the normality narrative and the fictionalizations was that the latter texts were more blunt than Leopold's in conveying the sexuality of the relationship. For that reason, they were key to cementing the transition connecting Leopold's sexuality with the Franks murder. Leopold never discussed the sexuality of his relationship with Loeb, relying instead on professions such as "I admired him extravagantly."<sup>4</sup> The third-party authors with whom Leopold worked acknowledged that the relationship was sexual, but

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<sup>4</sup> Nathan Leopold (NL), Letter in Petition of Rehearing, annotated: Aug 8, 1957, Leopold Loeb Collection at Northwestern University (LLC at NWU), box 2, folder 6, p. 2.

characterized it as “childish” or something that “has been greatly exaggerated.”<sup>5</sup>

Fictionalized accounts, by contrast, often relied on coded language, but the messages were still far clearer: at least one of two main characters, and perhaps both of them, were homosexual, and that fact was key to understanding the relationship and the murder that came from it. The adaptations of the case in fiction were in many respects similar to Leopold’s account, but were more blunt and effective in shaping the case as evidentiary reinforcement for the correlation of same-sex sexuality with sexual predation.

This midcentury construction of Leopold and Loeb’s sexualities, especially Leopold’s, had important and enduring effects for sexual politics in the United States throughout the second half of the twentieth century and into the twenty-first. Jordan Schildcrout argues that Leopold and Loeb became important examples of “the ways in which homosexuality is constructed in the homophobic imagination as dangerous and deadly.” Where other anti-gay arguments rely upon the threats that gay men and women pose to health, community, or society, the “murderous queer” construction represents an immediate threat of physical danger, and “conflates sexual deviance with violent criminal deviance, creating a villain who serves to vilify all queer people.”<sup>6</sup>

The “Queer Killer” can exist in many different genres, all of which tend to reinforce the basic image of the figure. He or she can be a real person whose sexuality the nonfiction media connect to his or her crime, such as Aileen Wournos or Jeffrey

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<sup>5</sup> John Bartlow Martin, “Nathan Leopold’s Desperate Years: Murder on his Conscience,” *Saturday Evening Post* 227, no. 40 (2 Apr. 1955), 87. Erle Stanley Gardner, Introduction to *Life Plus 99 Years*, by Nathan Leopold (New York: Doubleday, 1958), 11.

<sup>6</sup> Jordan Schildcrout, “Queer Justice: The Retrials of Leopold and Loeb,” *Journal of American Culture* 34, no. 2 (June 2011): 175.

Dahmer. He or she can be a wholly fictional construction, existing in films, plays or the like that spring exclusively from the creative minds of its producers, as with the movies *Cruising* (1980) or *Basic Instinct* (1992). And finally, the Murderous Queer can exist as a hybrid of the first two types, “when real queer killers become the basis for characters in fictional narratives.”<sup>7</sup> Starting in the 1950s, and continuing to the present day, Leopold and Loeb have been prominent figures in both the first and third positions. The press discussions of the case in connection with Leopold’s parole portrayed the historical Leopold and Loeb as Queer Killers, while novels, plays, and films fictionalized the historical figures the news media were so fervently discussing. The two different ways of using Leopold and Loeb to represent the pathologies of same-sex sexuality in men have been mutually influential and mutually reinforcing, facilitating their endurance across decades.

Where Schildcrout is primarily concerned with what stage and film adaptations reveal about changing notions of queer criminality in popular culture over time, I view those texts as inseparable from their relationship to nonfiction representations of the case and its historical legacy. Were it not for the various fictional portrayals’ connections to a real event, they would not have wielded the same influence over popular perceptions of same-sex sexuality in the nonfictional world. The two means of representing the case, as a historic event and a fictional trope, worked together to create in the public mind a distinct image of a Murderous Queer that was at once common in pop culture and validated by its connection to people’s senses of history. In that manner, the midcentury homophobic construction

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<sup>7</sup> Schildcrout, 176. William Friedkin, *Cruising*, 102 minutes (USA: United Artists, 1980), film. Paul Verhoeven, *Basic Instinct*, 127 minutes (USA: Carolco), film.

of the case was able to continue for decades after people began to question the contexts and preconceptions that had shaped it.

### THE FUNCTION OF FICTION IN THE POSTWAR DISCOURSE OF THE LEOPOLD-LOEB NARRATIVE

In later decades, the notions of the Leopold-Loeb case that came out of the interplay of fiction and nonfiction in the postwar era were firmly entrenched, seeming to be an innate part of the “facts” of the case, but the interplay itself began as the product of a distinct confluence of factors in the 1940s and 1950s. Fiction was not a new means of representing the case, but the fictionalizations of the late 1940s and 1950s differed from their predecessors in important ways.<sup>8</sup> They came out in a relatively short space of time, at least three novels and two feature films between 1948 and 1959. But more importantly, their relationship to the real Leopold-Loeb case differed from that of their predecessors. They both fed and fed on the public interest generated by Leopold’s return to the public eye, and spoke to the same postwar era issues Leopold had targeted with the normality narrative: same-sex sexuality, psychology, youth, and crime. They also, in portraying Leopold, made arguments about what kind of man he was and whether or not he deserved the parole

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<sup>8</sup> Playwright Patrick Hamilton had catapulted himself to fame with *Rope* (AKA *Rope’s End*) in 1929, a hit on the London stage that also found enduring success on British radio and television. The case was also a strong influence on Richard Wright’s novel *Native Son* (1940). For that matter, James Day’s accounts of Loeb’s death were transparent fabrications that posed as “true-life” accounts almost as a formality. Patrick Hamilton, *Rope*, 1985 ed., (London: Constable and Company, 1929, 1985); Richard Wright, *Native Son* (New York: Harper, 1940); On *Rope*’s translation to other British media: Keith Howes, *Broadcasting It: an Encyclopaedia of Homosexuality on Film, Radio, and TV in the UK, 1923-1993*, (New York: Cassell, 1993), 694-695. On the play’s commercial success: Nigel Jones, *Through A Glass Darkly: The Life of Patrick Hamilton*, (London: Scribners, 1991), 156. Hamilton repeatedly denied having based *Rope* on the Leopold-Loeb case, but his biographer, Nigel Jones, and Hamilton’s brother, Bruce, both credit the case with having inspired the play. Jones, 154; Bruce Hamilton, *The Light Went Out: The Life of Patrick Hamilton, by His Brother Bruce Hamilton*, (London: Constable, 1972), 56. On *Native Son*’s relationship to the Leopold-Loeb case Robert Butler, “The Leopold and Loeb Case: A Forgotten Influence on Richard Wright’s *Native Son*,” *African American Review* 39, no. 4 (winter 2005).

he was pursuing. The postwar fictionalizations, then, were as much commentaries on contemporary issues as they were portrayals of a historic event.

It is ironic that the fictionalizations bothered Leopold, because Leopold himself had created the market for them. He rekindled popular interest in the 1924 event with his parole campaign and emphasized the case's connection to critical questions about youth, sexuality, and crime in the postwar era, and in doing so he raised questions the normality narrative could never adequately answer. Critic Leslie Fiedler, writing the year Leopold left prison, found the problem with *Life Plus 99 Years* was not Leopold's self-serving statements, his refusal to discuss the crime, or even that the book "ends only with a handful of irrelevant clichés." The problem Fiedler identified was that "His style...reveals a man of fifty-two impossible to connect with the nineteen-year-old boy tried in 1924 or, at least, with our image of that boy." The new, reformed self that he presented in furtherance of his freedom was by definition too far removed from the teenager who had murdered Robert Franks to expose that murderer's psyche in a satisfying way, and however much it vexed Leopold the parole candidate, it was Leopold and Loeb the murderers people wanted to know.<sup>9</sup>

The continuing lack of nonfiction monographs on the case exacerbated the public's frustration with nonfiction as a means of understanding the case. Leopold's own memoirs were clearly biased, and would have been taken with a grain of salt even without the problems that Fiedler describes. Other nonfiction works tried to fill the void, but in doing so they only helped to bolster the market for fiction by playing into the same set of assumptions about same-sex sexuality and psychology while

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<sup>9</sup> Fiedler, 212-213.

providing less comprehensive portrayals. Psychiatrists assessed Leopold and Loeb's personalities and journalists recalled the crime in feature stories, but their assessments lacked novelty; they revisited information available since 1924, and could not close the historical distance with their subjects sufficiently to be fully satisfactory. Without authoritative sources on the events of 1924, the public had to rely on the contradictory and often dubious recollections of newspapermen for information about the historic case.<sup>10</sup>

Where Leopold's answers were unsatisfactory because they came from someone too close to the crime, and the nonfiction media's answers were equally unsatisfactory because they were too removed from it, fiction offered a way around both problems. Novelists, filmmakers, and dramatists could speculate about details that journalistic research would not permit, like the thoughts and actions of the people depicted. They could provide vivid descriptions of events long gone and put audiences into the significant moments behind the crime and sentencing hearing. They could, in short, render the events surrounding Robert Franks's murder immediate and wholly knowable for their audiences, something that Leopold's self-serving platitudes or journalists' faded recollections could not. That ability, combined

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<sup>10</sup> For a psychiatric study of Leopold and Loeb, see: Abrahamsen, 163-168. In popular media, recountings of the 1924 crime and sentencing hearing occurred primarily as features in newspapers and popular magazines or as portions of larger works. All of them were too brief to satisfy a fascinated public that was so far removed from the barrage of press coverage the case had received in 1924. Aside from Leopold's autobiography, *Life Plus 99 Years*, and a reprint of Maureen McKernan's *The Amazing Crime and Trial of Leopold and Loeb* (1924, 1957) – the former book written by Leopold, the latter with the cooperation of his defense team three decades earlier – novels and films were almost the only options for people who wanted extensive explorations of Leopold and Loeb. Nathan Leopold, *Life Plus 99 Years* (New York: Doubleday, 1958). Maureen McKernan, *The Amazing Crime and Trial of Leopold and Loeb*, reprint, intro by Clarence Darrow and Walter Bachrach (New York: New American Library, 1957); Hal Higdon, *Leopold and Loeb: The Crime of the Century* (Urbana, Ill.: U of Illinois P, 1975, 1999), 194.

with the dearth of trustworthy nonfictional coverage of the case, gave fiction writers authority over perceptions of the “real” Leopold-Loeb case.

Fiedler recognized this phenomenon back in 1958, when he analyzed two novels based on the case not as independent works featuring original stories, but as fictional corollaries to the public sphere discussions of the case because the authors were out to “‘solve’ a given situation rather than to create one.” The mystery that drives their work is not *who* committed the murder around which their plots center, but instead *why* the two murderers in each story kill their victim. The task for fictionalized narratives, then, was to examine the true-life Leopold-Loeb case, and they were judged as much for the plausibility of their explanations for Robert Franks’s murder and the value of those explanations for understanding youth, sexuality, and crime as for their merits as art or entertainment.<sup>11</sup>

The works that comprise the case’s postwar fictional narrative are hard to classify into any one genre. Only the book, play, and film versions of one story, *Compulsion* (1956, 57, and 59), and Mary-Carter Roberts’s novel *Little Brother Fate* (1957), qualify as historical fiction in that they were set in 1924 and tried to convey Leopold-Loeb as a historic event.<sup>12</sup> The other two narratives of the case, Alfred Hitchcock’s 1948 film adaptation of Patrick Hamilton’s play *Rope* (1929) and James Yaffe’s novel *Nothing but the Night* (1957), moved the murder to the postwar era.<sup>13</sup> But all of the adaptations were clearly based on the case, and therefore interpreted it

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<sup>11</sup> Fiedler, 211.

<sup>12</sup> Meyer Levin, *Compulsion*, (New York: Simon and Schuster, 1956); Meyer Levin, *Compulsion*, play, (New York: Simon and Schuster, 1956); Richard Fleischer, *Compulsion*, 103 minutes, (United States: 20<sup>th</sup> Century Fox, 1959), film; “Compulsion,” Internet Broadway Database, <http://www.ibdb.com/production.php?id=2651>; Mary-Carter Roberts, *Little Brother Fate* (New York: Farrar, Straus and Cudahy, 1957).

<sup>13</sup> Alfred Hitchcock, *Rope*, 80 minutes (United States: Warner Brothers, 1948), film; James Yaffe, *Nothing But the Night* (Boston: Atlantic Monthly Press; Little, Brown, 1957).



as a historic event through the stories they told. And all of those stories served to demonstrate for lay audiences a psychological correlation between same-sex sexuality and murder.

### ROPE (1948)

Alfred Hitchcock's 1948 film version of *Rope* was a pioneering effort in fictionalizing Leopold-Loeb according to postwar preconceptions. The only fictionalization to come out in the 1940s, it was also the most loosely based on the Franks murder. The adaptations of the mid-1950s, when Leopold's parole was making people rethink Leopold-Loeb as a contemporary issue, tried to tap more directly into the case; Hitchcock's *Rope*, by contrast, was more concerned with updating Hamilton's vision for a postwar audience. But whatever the film's intentions, it nevertheless made statements about same-sex sexuality, morality, and murder, and was an important early text for the Queer Killer construction of the Leopold-Loeb case in the postwar era.<sup>14</sup>

Both the play and the film juxtapose two young male thrill-killers against the normal, moral society in which they live, but in Hitchcock's film, unlike Hamilton's play, the juxtaposition is sexualized. The narratives of the play and the film unfold almost identically: at the story's beginning, two former schoolmates, Brandon and Phillip (Granillo in the play), commit a murder together and place their victim's body in a trunk immediately before hosting a dinner party to which they have invited their victim's friends and family. One guest, Rupert Cadell, begins to suspect the two

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<sup>14</sup> Dell Publishing released a paperback novelization of the film in 1948. The dialogue is mostly the same as in the film, with narrative sentences filling in the visual action. Don Ward, *Alfred Hitchcock's Rope* (New York: Dell, 1948).

men's crime and, in the climax, brings the murderers to justice. There is, however, a crucial difference in tone between the play and the film. In the play, the protagonist and the two antagonists are all, to use one scholar's phrase, "flagrantly closeted." Their sexuality is clear if not explicit, and Rupert's more so than either of the two characters. In the film, the two killers are clearly in a sexual relationship, but Rupert's sexuality was more ambiguous, and the dynamic among the three principals in the story changes significantly.<sup>15</sup> Without Rupert's same-sex sexuality to balance out the equation in the film as it does in the play, the movie draws a clear sexual boundary between the two gay thrill-murderers with no sense of normative morality and the heterosexual man who brings them to justice.<sup>16</sup>

The most important differentiation between Rupert and the two murderers occurs in the film's climax, when Rupert denounces his former friends. Earlier in the film, Rupert had espoused the same philosophical views about superior human beings being able to commit justifiable homicide that had led Brandon and Phillip to commit murder. But when Rupert opens the trunk that holds the body, he is overcome with revulsion and shame. He implies first that, whatever his prior professions, philosophy alone does not explain how Brandon and Phillip could have committed such an act: "there must have been something deep inside you from the very start that let you do this thing, but there's always been something deep inside me that would never let me do it." He then elaborates on what traits the two killers had, or lacked, that made them what they were. He declares that every individual has an obligation to the society in which he or she lives. Brandon and Phillip cannot appreciate this obligation, and thus

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<sup>15</sup> Hamilton, *Rope*, 27.

<sup>16</sup> Amy Lawrence, "Jimmy Stewart is Being Beaten: *Rope* and the Postwar Crisis in American Masculinity," *Quarterly Review of Film and Video* 16, no. 1 (May 1997): 50.

cannot fit in with normal, safe (and heterosexual) society, so instead they prey upon someone who can: “you’ve strangled the life out of a fellow human being who could live and love as you never could.”<sup>17</sup> The dialogue and plot developments of the final scene are essentially the same as in Hamilton’s play, but the differentiation of Rupert’s sexuality from Brandon and Phillip’s gives the film a very different tone. Rupert becomes a heterosexual man defining his difference from two homosexual men.

Read in itself, the dialogue above could seem to be moral statements removed from a connection to sexuality, but sexuality permeates the film as a whole so thoroughly that Rupert’s denunciation is inevitably sexualized as well. Arthur Laurents, the film’s screenwriter, recalled that he and Hitchcock did everything they could to convey Brandon and Phillip’s sexuality while working around industry censors.<sup>18</sup> Critical theorist D.A. Miller argues convincingly that even the murder itself carried metaphorical connotations of sex between men, so that Rupert’s repudiation of it was a really a rejection of the sexuality with which he might otherwise be connected.<sup>19</sup> With such strong and consistent same-sex sexual undertones throughout the film leading up to the climax, the audience is primed to read those same undertones into Rupert’s speech, and to correlate Brandon and Phillip’s sexuality to their amorality. James Stewart’s casting as Rupert made the contrast between Rupert and the murderers’ sexuality even more obvious. Amy Lawrence argues Stewart served in postwar era films as an icon of middle-American white masculinity, and

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<sup>17</sup> Hitchcock, *Rope*.

<sup>18</sup> Arthur Laurents, *Original Story By: A Memoir of Broadway and Hollywood* (New York: Knopf, 2000), 129, 131.

<sup>19</sup> DA Miller, “Anal Rope,” *Representations* 32 (autumn 1990), 121.

therefore hetero-normative values. Without an overt cue to the contrary from the film's script or a clear signifier from Stewart's performance, the audience would presume that Stewart represents those values in *Rope* as he did in other films from the era. Thus when Stewart's Rupert, the surrogate for decent, moral society, condemns his nemeses, an icon of postwar white American masculinity condemns two male lovers who are constitutionally incapable of living peacefully in his world.<sup>20</sup>

The addition of same-sex sexuality as a character trait in homicidal characters has become a common trope in both fictional and nonfictional media, the Queer Killer that Schildcrout describes thriving in American popular culture.<sup>21</sup> But beginning with Rupert's impassioned denunciation of the two homosexual thrill killers as alien beings with no sense of normative morality, the construction of same-sex sexuality relative to crime had a special relationship with fictionalizations of the Leopold-Loeb case. The fictionalizations created murderers who exemplified the dangers of same-sex sexuality in men, but the examples themselves clearly translated into understanding two real men whose crime had been loaded with significance for decades, giving the fictionalizations special authority as explanatory texts. Eight years after *Rope*, the lines between fiction and nonfiction grew even blurrier.

### COMPULSION (1956)

Film scholars tend to focus on Hitchcock's film because of the fame of its director and its technical sophistication, but historians of Leopold-Loeb are more

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<sup>20</sup> Hitchcock and his screenwriter, Arthur Laurents, had intended to replicate the sexual dynamics of the play by hiring an actor who could capture Rupert's same-sex sexuality. After Cary Grant and Montgomery Clift both turned down the Rupert role, reportedly because they feared the character would bring their own sexuality under scrutiny, the role went to Stewart; Laurents, 130-131. For more on Stewart's status as an icon of postwar masculinity, see Amy Lawrence's "Jimmy Stewart is Being Beaten."

<sup>21</sup> Schildcrout, 175-176.

likely to study the *Compulsion* franchise, especially its source text, Meyer Levin's 1956 novel. More than any other work of fiction in the postwar era, the novel was a *roman à clef*, clearly intended to provide insight into the events of 1924 and the contemporary question of Leopold's parole. Levin researched the book as though it were nonfiction, and even talked with Leopold about collaborating with him on the project. After negotiations with Leopold fell through, Levin continued to research *Compulsion* as though it were nonfiction, and pressured the Leopold family to give him access to the sentencing hearing transcripts from 1924.<sup>22</sup> He stuck to the historical record very closely – although not exclusively – in reconstructing the events of 1924, then blended his research-based text with fictional elements that illuminated and reinforced his speculations about his character's inner lives.

His final creation was a blend of history, speculation, psychoanalysis, and fiction that is impossible to unravel and which has wielded explanatory authority over the true-life case for decades. Levin wrote in his introduction that “whether my interpretation is literally correct is impossible for me to know. But I hope that it is poetically valid, and that it may be of some help in widening the use of available knowledge.”<sup>23</sup> In a book so clearly based on real events and so earnestly engaged in analyzing them, “literally correct” and “poetically valid” became hard to distinguish. Indeed, *Compulsion* found so much credibility with both scholarly and lay audiences that Levin became a psychological expert on the case, especially when it came to

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<sup>22</sup> Elmer Gertz Collection at the Library of Congress, Manuscript Division, box 124, folder 6.

<sup>23</sup> Levin, *Compulsion*, novel, x.

Leopold.<sup>24</sup> Levin gave lectures all over the country, published an opinion piece favoring Leopold's release in *Coronet* magazine, and testified at Leopold's 1957 clemency hearing, performing what Levin termed his "amateur psychological-sociological analysis" of Leopold for the Parole and Pardon Board.<sup>25</sup>

Although *Compulsion* obtained much of the status of a history of the Leopold-Loeb case, the book's success also relied heavily on Levin's readiness to interpret the case according to contemporary mindsets, using psychoanalysis to deconstruct Leopold as both a delinquent and a homosexual. Like Leopold, Levin was articulating a reinterpretation of the crime tailored to a contemporary audience. They spoke to the same concerns and tapped into the same cultural preconceptions to gain currency for their characterizations. Referring to the defense alienists' work in 1924, Levin wrote in *Compulsion*'s introduction that "psychiatric testimony in this case was comprehensive, advanced, and often brilliant, yet with the passage of time a fuller understanding may be attempted."<sup>26</sup> Using the "available knowledge" that postwar Neo-Freudian thought supposedly afforded, he psychoanalyzed Leopold and Loeb in a self-consciously cutting-edge fashion. He mechanistically interpreted the whole of Leopold and Loeb's psyches in a manner similar to the defense alienists thirty years earlier, but he was far more specific and comprehensive than they. Levin did not simply trace the development of his subjects' personalities and how they led to the Franks murder; he presented a deterministic cause-and-effect dynamic between his characters' personality development and every specific element of the murder, from

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<sup>24</sup> In one of Hervey Cleckley's revised editions of *The Mask of Sanity* (1941, 1966), a seminal work on psychopathology, Cleckley praised *Compulsion* extensively. Hervey Cleckley, *The Mask of Sanity*, fourth ed. (St. Louis: C.V. Mosby Company, 1964), 268-269.

<sup>25</sup> Meyer Levin, *The Obsession*, (New York: Simon and Schuster, 1973), 223.

<sup>26</sup> Levin, *Compulsion*, novel, x.

the weapon to the victim selection to the dumpsite. He also offered what was, at the time, the most explicit discussion of Leopold and Loeb's sexuality to date and incorporated it into his psychological study, furthering the comprehensiveness of his narrative.

The elements that Levin brought together – the authority of nonfiction, the readiness to update the psychological analyses of Leopold and Loeb for the 1950s, and the most protracted discussions of Leopold and Loeb's sexualities since the defense alienists testified in 1924 – all made *Compulsion* a huge commercial success. It sold over a million copies in paperback and spawned adaptations as a Broadway play in 1957 and as a feature film from Twentieth Century Fox in 1959.<sup>27</sup> The above characteristics not only contributed to the novel's commercial success, but also made the book an indispensable text in formulating, disseminating, and instantiating the correlation of same-sex sexuality with psychological drives to murder. Within a book where it was often hard to tell where research ended and fabrication began, Levin explicated the supposed psychological connections between homicidal tendencies and same-sex sexuality in far more detail than had either version of *Rope*, or for that matter most explorations of the case in nonfiction. His clinical approach to drawing those connections gave them considerable authority, while the novel's popularity ensured that they reached a wide audience.

Levin's story unfolds through the first-person narration of Sid Silver, a reporter with a firsthand knowledge of the events surrounding the 1924 murder of Paulie Kessler (Robert Franks). Silver is writing the book in 1956, when the prospect

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<sup>27</sup> Paula Fass, "Making and Remaking an Event: the Leopold and Loeb Case in American Culture," *Journal of American History* 80, no. 3 (Dec. 1993): 944.

of parole for Judd Steiner, Nathan Leopold's surrogate, is causing a heated public controversy. In 1924, Silver was an acquaintance of Steiner and Artie Straus (Loeb) as well as a reporter responsible for crucial breaks in the case, so in the novel his editors think him uniquely qualified to illuminate the question of Steiner/Leopold's rehabilitation for the public. Levin frames the book as Silver's response.<sup>28</sup> In 1956, the real Nathan Leopold was trying to build up public support for his release in the hopes of persuading the parole board to reopen his case, and the applicability of Levin's work to that issue is unmistakable, making Levin's commentaries on his Leopold and Loeb characters telling commentaries on the real figures. Silver recalls the events of 1924 for his readers as a firsthand observer who sees or hears about every development in the case, and observes or talks to every significant person involved in it. He becomes a surrogate for his readers; they learn about the case and learn to appreciate its nuances along with him as, over the course of his investigation in 1924, Silver comes to understand from where the two killers developed the compulsion to murder, and how one of them might have outgrown it.

#### PSYCHOLOGY AND SEXUALITY IN *COMPULSION*

The psychological implications of Leopold and Loeb's sexualities come through most strongly in three conversations Sid Silver has with a brilliant psychoanalyst named Willie Weiss. Most of the characters in the book are clear stand-ins for real people, but Weiss is an interesting exception. Levin fabricated Weiss in order to integrate extended psychoanalyses into *Compulsion's* narrative; Weiss reinterprets the elements of the case in 1924 to show that Steiner/Leopold's

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<sup>28</sup> Levin, *Compulsion*, novel, 3-4, 495.



same-sex sexuality is a psychological affliction that developed out of childhood experiences, especially poor parenting. Scholar Leslie Fiedler sees in *Compulsion*'s interpretations an effort to speak to the parental anxieties of the postwar era, when the second Freudian wave's emphasis on parental involvement left middle class parents stricken with anxiety and guilt over their children's personality development.<sup>29</sup> In an even more specific reflection of popular Freudian thought from the 1950s, Weiss connects Steiner/Leopold's same-sex attraction to his mother, who wanted a girl and began feminizing him in infancy.<sup>30</sup> Steiner/Leopold's complicity in the murder that drives *Compulsion*'s plot is represented as a product of that maladjusted development.

Over the course of the three conversations Weiss has with Silver, Weiss, possessed of an uncanny understanding of the human mind, deconstructs the two killers' subconscious drives to explain virtually every element of their relationship and the murder they commit together. The victim selection, the use of a chisel as the murder weapon, and the body dump site all connect to unknown and usually sexual influences on the Leopold and Loeb characters' psyches. Most importantly, in the climactic final meeting between Weiss and Silver, the reader learns that the Steiner/Leopold character was looking for a symbolic womb into which he could stuff his victim's body, a surrogate for himself, and thus be reborn after symbolically killing himself. Specifically, he wanted to be reborn as someone capable of maturing beyond his homosexuality.<sup>31</sup> Thus, although the Franks murder was not, in Levin's

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<sup>29</sup> Fiedler, 226.

<sup>30</sup> Levin, *Compulsion*, novel, 258, 484. Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago: U of Chicago P, 1999), 316-319.

<sup>31</sup> Weiss performs his analyses on pages 294-297, 350-59, 480-490.

interpretation, a homicide committed to satisfy sexual lust, it was still a homicide committed because of same-sex sexuality.

Levin's interpretation of the crime borrowed from and revised previous efforts to explain the Franks murder. Although, through the notion of Leopold's subconscious drive for symbolic rebirth, Levin also gives Leopold his own motive for the crime, Levin still portrays Steiner/Leopold and Straus/Loeb's relationship and criminality through the same basic dynamic that had been assumed since the defense alienists' work in 1924. Each participant corrupted the other to meet their needs: Straus/Loeb instigates the criminal acts in the relationship, while Steiner/Leopold instigates the sexual acts. Similarly, Levin's assertion that Leopold's participation in the crime stemmed from a youthful maladjustment that Leopold could outgrow was compatible with the normality narrative that Leopold himself was disseminating in the national news at the same time *Compulsion* was climbing the bestseller list. The chief difference between Leopold's narrative and Levin's was that Levin's work is blunt about sex in a way that Leopold never was.

*Compulsion* evokes sympathy for Nathan Leopold while condemning his sexuality. When Sid Silver first learns of the sexual relationship Steiner/Leopold and Straus/Loeb, his gut reaction is disgust, but with Willie Weiss's help, he progresses towards a nuanced understanding of homosexuality. That understanding is not exonerative – Silver never questions his revulsion towards homosexuality – but it is clinical rather than visceral. Steiner/Leopold's attraction to Straus/Loeb was neither his fault nor his choice. His mother's desire for a girl had created a gender confusion in him that drove him to homosexuality, precluded him from living a normal life, and

filled him with self-loathing. Pitiably, Steiner/Leopold is drawn to the possibility of being “ordinary,” of having a healthy heterosexual relationship, leading to marriage and family. He hates how his compulsion to be with Straus/Loeb interferes with those possibilities, but he could not overcome it until his symbolic death and rebirth through the murder. The murder was, in this sense, therapeutic: it facilitated his breaking away from his relationship with Straus/Loeb and began Steiner/Leopold’s maturation into a heterosexual, non-homicidal adult. In the week between the murder and his arrest, Steiner/Leopold begins to take steps towards heterosexual courtship with a young woman named Ruth, clearly based on Susan Lurie, a romantic interest of Leopold’s from 1924. (Leopold used Lurie in a similar manner in *Life Plus 99 Years*, published two years after *Compulsion*<sup>32</sup>). By the time he and Straus/Loeb began to serve their sentences, Steiner/Leopold had overcome his dependence on the same-sex relationship.<sup>33</sup>

The book’s final message about same-sex sexuality is that it is a psychological pathology that wreaks psychic harm on the afflicted and physical harm on third parties such as Paulie Kessler/Robert Franks, but the afflicted can move past their sexuality to become normal, moral people. Levin’s conclusions that Leopold/Steiner could mature past the developmental problems of his youth and warrant release from prison were very compatible with the normality narrative. However, Levin’s willingness to be blunt about the sexuality of the case more directly indicated that sexuality was one of the key psychological problems that led to the murder. Through

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<sup>32</sup> Leopold, *Life Plus 99 Years*, 30-31, 121-123.

<sup>33</sup> The maternal influence Levin describes is a classic example of 1950s thought on parenting and psychosexual development. Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society*, (Chicago: U of Chicago P, 1999), 317-318.

the depth and directness of his analyses, he completed and explicated the conceptual bridge between same-sex sexuality and murder whose construction had been under way for decades. He clarified the relationships between same-sex sexuality, abnormality, and the Franks murder that the alienists had indicated but never fully explained, and that Leopold's vague discussions of admiration for Loeb had played to, but never addressed satisfactorily.

### COMPULSION'S LEGACY

Levin's ideas about the case caught on so strongly that they continued to affect perceptions of the case for decades. Nearly twenty years after its publication, when Hal Higdon produced *Crime of the Century*, the first monograph on the Leopold-Loeb case, one reviewer called the book, which was written and marketed as nonfiction, an "update of *Compulsion*."<sup>34</sup> Higdon himself granted the psychoanalyses of Leopold from Levin's novel considerable credibility within *Crime of the Century*, and advertisements for the hardcover edition featured Levin's endorsement.<sup>35</sup> When *Compulsion* was reprinted in 1996, the cover bore photographs of Leopold and Loeb from 1924.<sup>36</sup> The novel also inspired literary successors; two other novels based on Leopold and Loeb came out in 1957, one year after *Compulsion*.<sup>37</sup> And, perhaps most importantly for popular audiences over the long term, the novel served as the basis for a major motion picture, spreading the book's message to another medium.

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<sup>34</sup> *Chicago Daily Tribune*, 12 Oct. 1975.

<sup>35</sup> Higdon, 325-326; Advertisement for *Crime of the Century*, *Chicago Daily Tribune*, Book World section, 19 Oct. 1975.

<sup>36</sup> Meyer Levin, *Compulsion* (New York: Carrol and Graf, 1996).

<sup>37</sup> The two novels were Yaffe's *Nothing but the Night* and Roberts's *Little Brother Fate*.

The film version of *Compulsion*, screenwritten by Richard Murphy and directed by Richard Fleischer, occupies an important position in the canon of fictionalized interpretations of the Leopold-Loeb case and played a unique role in perpetuating an altered version of the novel's message. It was actually the second adaptation of the novel, but it reached a far wider audience than its predecessor. The first adaptation was a highly anticipated Broadway production that generated big news and large advance sales but never lived up to its promise, running for only the 1957-1958 season before going on a similarly lackluster tour.<sup>38</sup> The film never became the sensation that the book did, but it had an enduring presence in American culture, translating some of the book's content to the screen in 1959, and reappearing for new audiences in the 1990s on VHS and DVD for home theater systems.<sup>39</sup> In 1992, when filmmaker Tom Kalin set out to challenge the heterosexist interpretations of the Leopold-Loeb case with his own film, *Swoon*, he targeted the film version of *Compulsion* more obviously than the book.<sup>40</sup>

The film *Compulsion* lacked the detail and nuance that gave the book the verisimilitude and credibility of a research monograph, but the power of cinema to recreate events offset that loss by giving viewers the sense that they were actually

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<sup>38</sup> The play was beset by production problems from the start. Levin wrote the first draft of the script, but the producer insisted on bringing in another author for rewrites, leading to a prolonged argument and bitter resentment between Levin and the producer before rehearsals even began. The play was also expensive to produce, such that it would have almost to sell out every performance to break even. Levin insisted that the final version be billed the "producer's version," then published his own script in 1959 to help differentiate the two. A different version based solely on Levin's vision for the show toured off-Broadway in 1958. Levin, forward to *Compulsion*, play, v-xl, xxxv, Xxxix-xl. *The Obsession*, 144-187, "Vital Statistics," Plaintiff's Exhibit, Robert Bergstrom Papers, MSS Midwest Bergstrom, Newberry Library, Chicago, box 6, folder 31, p. 6A.

<sup>39</sup> Twentieth Century Fox Home Entertainment released *Compulsion* on VHS in 1995 and on DVD in 2006.

<sup>40</sup> Tom Kalin, *Swoon* (United States: American Playhouse, 1992), 82 min. On *Swoon's* challenge to the film version of *Compulsion*: Armond White, "Outing the Past," *Film Comment* 28, no. 4 (July-Aug. 1992): 22.

watching the events of 1924. *Variety* called the film “almost a literal case study of the notorious Leopold-Loeb murder” with “overtones of the documentary,”<sup>41</sup> and the Chicago Historical Society held a showing for people interested in it as a representation of the 1924 historic event.<sup>42</sup> Although the movie came out after Leopold’s parole, it was still considered a key source for understanding the case as it related to contemporary social issues: several groups, including state legislatures, screened the movie for its supposed value for understanding capital punishment and juvenile delinquency. One screening was held at a national convention of district attorneys and attorneys general, while another, in Washington, DC, had a list of attendees that included Supreme Court justices William Douglas, Stanley Reed, and Harold Burton, as well as two federal judges and a US Senator.<sup>43</sup> The film’s variations from the book and from the facts of the case, then, do not appear to have greatly diminished the authority of its messages about sexuality, youth, and crime.

The film perpetuates the novel’s conceit that same-sex sexuality was a causative factor in the Franks murder. Steiner/Leopold and Straus/Loeb’s sexual relationship is more subdued in the film version, even more so than it was in Hitchcock’s *Rope*, but the tie-in with the book, combined with the insinuations on screen, made the sexuality at issue sufficiently clear that a writer for *Variety* explicitly noted the sexuality of the film’s central characters: “the...production brings the brilliant young sex deviates to life with...a certain bold honesty.” That “honesty,” of course, included portrayals of Steiner/Leopold’s attraction to Straus/Loeb rendering

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<sup>41</sup> Review of the film *Compulsion*, directed by Richard Fleischer, 4 Feb. 1959.

<sup>42</sup> Chicago *Daily News*, weekend magazine, 7 Nov. 1958.

<sup>43</sup> Robert Bergstrom Papers, MSS Midwest Bergstrom, Newberry Library, Chicago, box 6, folder 36, pp. 77-79.

the former dependent, pathetic, and ultimately dangerous, a slave to the whims of the object of his adoration. Straus/Loeb, following the normality narrative's portrayal of Loeb more than Levin's careful construction in the novel, is a two-dimensional remorseless psychopath.

Lost in the translation to the screen was the book's psychoanalytic nuance. The alienists get very little screen time, during which they do not delve deeply into the psychological development of their subjects. The Willie Weiss character and the wraparound story surrounding Steiner/Leopold's parole both disappear altogether, taking with them Weiss's supplementary psychoanalyses and the wraparound story's suggestions of redemption for Leopold. Without those devices exposing the hidden processes that lay underneath the surface of Steiner/Leopold's actions and his sexuality, all the audience is left with is the character's sexuality: Steiner/Leopold becomes a monster who cannot have a healthy relationship with a woman and who kills (in large part) because of his deviant sexual impulses.

COMPULSION'S CONTEMPORARIES: *NOTHING BUT THE NIGHT* (1957) AND *LITTLE BROTHER FATE* (1957)

*Compulsion*, in both its book and film forms, was the most widespread, commercially successful, and enduringly influential fictionalization of the Leopold-Loeb case in the 1950s, but it was not the only one. Two other novels, *Nothing but the Night* (1957) by James Yaffe, and *Little Brother Fate* (1957) by Mary-Carter Roberts, offered interpretations of the case that differed significantly from each other and from the *Compulsion* franchise. These works lacked the psychoanalytical detail of Levin's novel, and each text had a different take on the relevance of sexuality and psychology

for causing the murder, but they both connect same-sex sexuality to psychological dysfunction and suggest a causative association between those two traits and Robert Franks's murder. All three novels then, as well as the film versions of *Rope* and *Compulsion*, contributed to a widespread consensus in American culture that the Leopold-Loeb case was an evidentiary study in the psychological problems and antisocial behaviors that same-sex relationships engendered.

Yaffe transplanted the case to the 1950s and modified his Leopold and Loeb characters to make them more typical of contemporary youth, the better to emphasize the general principles about young people, sexuality, and crime that the case could illuminate. Levin too had seen the Leopold-Loeb case as a way to explore general ideas of causation in relation to youth, psychology, same-sex sexuality and murder, but Levin did so through an exploration of a case that, even in the novel, was recognized to be of historic importance. Yaffe adapted the historic case into a contemporary case study on juvenile delinquency at a time when the public and media perceived this as a national crisis, and created Leopold and Loeb characters who were important for their seeming typicality rather than remarkable for their uniqueness. Barry (Leopold) and Paul (Loeb) are 17-year-old high school students when they commit the murder, and are shaped by the same pressures and influences that could beset any white teens of the time whose families were middle class or higher. Still, Yaffe's source material remains clear, especially in Paul and Barry's personalities and their relationship with one another.

Yaffe's conceptualization of the Leopold-Loeb relationship dynamic emphasized the emotional over the sexual, but otherwise his narrative followed (and



thus affirmed) the idea that Leopold – now reshaped as a proto-typical American boy of the Yaffe’s time – participated in the murder because of same-sex attraction. Barry is a lonely and socially awkward teenager who evinces no attraction to women and fantasizes about being the slave to a stronger boy’s king.<sup>44</sup> Yaffe does not make Barry’s attraction to the king figure overtly sexual, but he describes Barry’s home life as a textbook example of “momism,” a specific kind of poor mothering that could produce a homosexual child according to popular psychosexual thought in the postwar era. Barry’s mother is an overbearing woman who refuses to give her son adequate space to develop self-confidence, independence, and a healthy heterosexual sex drive. Barry’s father, also in keeping with 1950s psychosexual thought, is blamed for Barry’s problems to the extent that he acquiesces to his wife’s dominance and fails to set a good example for his son. Whether Barry’s attraction is explicitly sexual or not, he is clearly humiliated by his own instincts, but finds gratification when he meets Paul, the dominant complement to Barry’s submissive personality. Paul is charismatic, manipulative, narcissistic, and amoral. In short, Paul is Loeb as many people knew him in 1924, and even more so as he was taking shape in the films and novels of the 1950s, as well as in Leopold’s normality narrative.<sup>45</sup>

Barry, in contrast, has a strong sense of morality, but his desperate need for Paul’s companionship overwhelms his moral repulsion at Paul’s ends. After the murder, Barry is so consumed by guilt that he confesses unprompted, and is doomed to spend the rest of his life in prison consumed by remorse. The emphasis on the fictional Barry’s conscience allows Yaffe to demonstrate how strong Barry’s need for

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<sup>44</sup> Yaffe, 50-63, 105-106.

<sup>45</sup> Yaffe, 45-51. Terry, 316-319.

Paul is, and hence how dangerous it is, both for Barry and his victim. Barry's attachment leads him to do something that he not only does not want to do, but which he knows to be morally wrong. More than in any other narrative of the case, in fiction or non-fiction, Yaffe's version paints a portrait of a tragic and sympathetic figure, a person of great potential brought down by complexes somewhat internal to himself and yet beyond his control. But in the end, it did not change the fact that his vulnerability to Paul's figurative seduction turned him into a murderer.

Mary-Carter Roberts's *Little Brother Fate*, published in 1957, the same year as *Nothing but the Night*, offers no similar sympathy. Roberts connects her characters' sexuality to their crime more bluntly and more directly than any other fictional narrative, but she sees it as evidence of monstrosity, not affliction. She portrays the murder itself as a sex crime thinly disguised as a thrill killing, whose perpetrators avoid execution because their attorney managed to reframe the crime as a murder with no motive rather than a murder with a sexual one.<sup>46</sup> More than any of her predecessors, she told a story that embodied the suspicions that Robert Franks had been the target of one or both of his killers' sexual lust, and her antagonists represent the most sinister archetypes of the postwar sexual psychopath.

Like her predecessors, Roberts is primarily concerned with the relationship between her Leopold and Loeb characters, but she blends a focus on the psychology of the relationship with a more strongly moralistic tone than either of the other novels. Both of *Little Brother Fate*'s main characters are amalgamations of Leopold and Loeb with purely fictional elements added in as well. Thomas, age eighteen at the time of the murder and the leader of the two, is brilliant, but rotten to the core.

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<sup>46</sup> Roberts, 172-173, 195, 234.

Herman, seventeen at the time of the murder, is someone for whom obeying orders comes naturally; he is the submissive partner even though he is the smarter of the two. Thomas and Herman have a relationship of personality convergence that is actually closer and more sinister than the historical records of the Leopold-Loeb case support. By the time they were nine and seven years old, respectively, *Little Brother Fate*'s boys had already merged personalities so thoroughly that "there was no residue of a separate personality left; Thomas and Herman became a single being who was neither of them."<sup>47</sup> Their sexual relationship is born of Thomas's determination to protect that bond after he decides it is the only way to avoid having their shared personality torn asunder by Herman's independent pursuit of women. When even sex proves insufficient for Thomas and Herman to maintain their psychic symbiosis, they decide to commit a murder together.

The murder, as written by Roberts, has a sexual motive independent of Thomas and Herman's relationship. Thomas selects the victim, an eleven-year-old named Billy Marks, in advance, not randomly on the day of the murder as Leopold and Loeb claimed to have chosen Robert Franks. The twenty-year-old Thomas is in love with Billy and, uneasy with feeling these emotions, decides to eliminate the object of his fixation. Thus what was supposedly a murder through which Thomas and Herman could prove their intellectual superiority is in reality, at least for Thomas, a sexually motivated crime.<sup>48</sup> Thomas had originally planned to torture Billy, but his bungled efforts during the kidnapping necessitate Herman's assistance in killing him quickly.

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<sup>47</sup> Roberts, 79.

<sup>48</sup> Roberts, 172-173, 195.

The depth with which Roberts explores the dynamic between Thomas and Herman does not translate into pity for either of the two men, only a better understanding of the heavily sexualized evil they represent. The structuring of the story connects Herman and Thomas's sexual relationship with each other to the sexual homicide of their victim. It implies that all three forms of sexuality as the book conceives them – same-sex sexuality, pedophilia, and sexual homicide – overlap, but only in ways that further demonstrate the monstrosity of each, and therefore implying that homosexuality is potentially as menacing and evil a trait as the other two.

At times, Roberts's work reads as a "corrective" of earlier narratives and even of the historical records. Roberts goes so far as to challenge the interpretations of the case that had been sympathetic to Leopold. She implies that her narrative is peeling away the layers of untruth that began surrounding the Leopold-Loeb case during the 1924 sentencing hearing. In her version, two of the historical case's defining elements, the perception of the murder as a thrill killing, and the psychoanalytical explanation for the crime, were concocted by Thomas and Herman's brilliant but unprincipled attorney to hide the sexual motive that lay at the crime's core. Roberts treats the attorney's summation as a clear and calculated miscarriage of justice, stating bluntly that the two defendants evaded the death penalty they so richly deserved as their attorney turned them into victims.<sup>49</sup> For people familiar with the historical Leopold-Loeb case, Roberts clearly suggests that the true nature of the Robert Frank's murder was sexually predatory, and that the popular perception of the Franks murder as a random thrill killing was a canard, finally exposed only with Roberts's exposition. The moral of the story, then, was that underneath all of the

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<sup>49</sup> Roberts, 234.

psychological complexity that had surrounded the case since 1924 lay a far simpler truth: Leopold and Loeb were sexual psychopaths and evil, and the two traits were inextricable.

### CONCLUSION – THE LEGACY OF THE POSTWAR FICTIONALIZATIONS

Neither Roberts nor Yaffe's book reached as wide an audience as the book and film versions of *Compulsion*, but they nonetheless indicate how important fiction had become for understanding and interpreting Leopold-Loeb. The case had become as much parable as historical narrative, something that could be turned to the discovery of deeper relevance, as well as something through which the *supposed* pursuit of deeper meanings allowed works of crime fiction ready claims to social and political profundity.

Readers were ready to accept those claims, and indeed insisted on them on as an essential component of Leopold-Loeb fictionalizations. In 1957, Anthony Boucher, a book critic for the *New York Times*, weighed the three postwar novels against one another. He found that *Compulsion* was "fiction so accurate that it may almost serve instead of the factual record." He deemed *Nothing but the Night* flawed because the book, "for all its readability, alters so many basic data that it becomes unconvincing" as a treatise on the Leopold-Loeb case, the fault of historical inaccuracy overshadowing the virtue of literary virtuosity. Roberts's *Little Brother Fate* struck a beneficial compromise between the approaches of its two successors, achieving "a distillation from the facts of the psychological and poetic truths of

character.”<sup>50</sup> The idea of reviewing a fictionalization of the Leopold-Loeb case purely on its merits as fiction did not enter Boucher’s thinking.

But nor did Boucher hold the books to the same standards of accuracy as histories. After acknowledging Roberts’s deviations from the historical record, he declares “the author’s psychological...interpretations are vivid and penetrating; and no reader will forget the terribly real, yet somewhat larger-than-life, characters whom she re-creates in all their torment.”<sup>51</sup> At a time when the popular fascination with Leopold-Loeb as a source text on psychology and sexuality was at its peak, Boucher looked to artistic invention to provide the truth about a real life event, but also credited Roberts’ inventions for their realism. Boucher’s assessment of the novels indicates that Levin’s ambition to create something “poetically valid” regardless of whether it was “literally correct” was taking hold on a broader scale.<sup>52</sup> Fiction and nonfiction played complementary roles in reshaping the case according to contemporary preconceptions, and the synthesis between the two affected how people viewed the historical Leopold-Loeb case and the real-life issues to which the case related.

The most important effect of these fictionalized accounts on perceptions of the true-life Leopold-Loeb case was their portrayal of Leopold’s sexuality as the key to understanding his dependence on Loeb and hence his participation in the Franks murder. The fictionalizations repeated Leopold’s basic postwar narrative of how Loeb had seduced him into committing the Franks murder, and they did so in a totally unreflective, uncritical way, even while in several instances positioning themselves

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<sup>50</sup> Anthony Boucher, “Report on Criminals at Large,” *New York Times*, 14 Apr. 1957.

<sup>51</sup> Boucher, “Report on Criminals at Large.”

<sup>52</sup> Levin, *Compulsion*, novel, x.

consciously and explicitly as critical of a historical narrative they saw as deeply flawed. But where Leopold preferred to present himself as a young man with a childish crush in 1924, the fictionalized portrayals of him encouraged people to perceive Leopold at the time of the Franks murder as a homosexual, the embodiment of the type of man who was sexually attracted to other men as that type was constructed in the postwar era. Therefore, the fictionalizations all served to varying extents to connect homosexuality to the Franks murder, an event popularly considered a source text for understanding modern crime. Fictionalized accounts uniformly showed Leopold the homosexual as weak willed and susceptible to participation in a horrific act of violence because of his sexually and/or psychologically perverse compulsion for a relationship with another man. In so doing, these narratives directly contributed to the construction of homosexuality as inherently abnormal and potentially dangerous, and shaped the historical case's narrative into evidence supporting this view.

The fictionalizations at issue here were important not only for the ways they contributed to the case's narrative in the postwar era, but also because they ensured that the postwar narrative would endure. Without them, the midcentury resurgence of interest in the case and the reevaluations of 1924 might have proved an ephemeral part of the Leopold-Loeb case's history, dated conceptions of the crime that faded along with the factors that had helped to create them: Leopold's parole and the 1950s moral panics over sexual psychopathy, homosexuality, and juvenile delinquency. Instead, the perception that Leopold's criminality was an offshoot of his sexual and emotional attachment to Loeb came to define the Leopold-Loeb case. The myriad

other elements that had shaped Leopold and Loeb's partnership and led to their criminal compact, so carefully documented by the alienists in 1924, were subsumed under the much simpler and more easily grasped idea that same-sex sexuality explained the case.

Beginning the 1980s and continuing well into the 2000s, a new generation of artists challenged the homophobic preconceptions that had grown up around the case. Each of these later interpretations questioned the 1950s mythology, documented here, that Leopold's same-sex sexuality had led him into complicity with child murder. They tried to convey Leopold-Loeb as a love story, or to give Leopold more agency in the relationship, or to demonstrate that 1920s homophobia helped to drive the two teens to murder, but despite these various challenges to the 1950s narratives, each of the new interpretations still reinforced the assumption that Leopold's sexuality had somehow led him to the murder.<sup>53</sup> Thus did the perceptions of sexuality in the Leopold-Loeb case that came out of a very specific confluence of factors and in very specific historical context – a middle-aged convict blaming his crime on his accomplice's influence, a society in the grip of a panic over homosexuality and its supposed connection to sexual crimes, and a slew of fictionalizations that found audience appeal based on the other factors – continue affecting perceptions of sexuality and the case long after people first came to question the historical context and preconceptions that shaped the narrative.

The fictionalizations of the postwar era were a relatively short-lived phenomenon. After the film version of *Compulsion* in 1959 they ceased almost

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<sup>53</sup> John Logan, *Never the Sinner* (New York: Samuel French, 1999); Stephen Dolginoff, *Thrill Me: The Leopold & Loeb Story* (New York: Dramatist Play Services, 2006); Kalin, *Swoon*.



altogether until the early 1980s.<sup>54</sup> Leopold's parole, and the gag that the Parole Board placed on him, took the case out of the news fairly quickly and broke the cycle of mutual reinforcement between the parole campaign and the fictionalizations of the crime. Leopold, who hated the fictionalizations discussed here and was newly empowered by his release from prison, also tried to hasten the decline in fictionalized accounts of his case by initiating a civil suit over the book and film versions of *Compulsion* in 1959, creating a deterrent to other would-be adapters of his story.

But if Leopold's goal was to check fiction's power over his image, it was already too late. The most important elements of the postwar fictionalizations had already taken on definitional power over the Leopold-Loeb case, and fiction had been established as a legitimate avenue through which later generations could explore and understand the historical case. Moreover, when the fictional works of the late twentieth and early twenty-first century adapted the case, they revealed that the characterizations of the postwar era fictionalizations, particularly of the relationship between Leopold and Loeb's sexuality and their criminality, had become fundamental for historic memories of the "real" Leopold-Loeb case. The synthesis of historical event and cultural narrative had come full circle, turning the story of two young men who murder because of their sexuality into a common and easily recognizable trope in American culture.

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<sup>54</sup> There was one short story, in 1965, which remains the only fictional work to focus on Leopold's parole to date: Jerome Weidman, "The Death of Dickie Draper," in *The Death of Dickie Draper and Nine Other Stories*, (New York: Random House, 1965), 3-45.

## CHAPTER SIX

### OWNING THE LEOPOLD-LOEB NARRATIVE: NATHAN LEOPOLD AND THE *COMPULSION* LAWSUIT

“Leopold had a right to be his own judge of the propriety, or impropriety, of what was written about his private life.”

– Elmer Gertz, Nathan Leopold’s Attorney<sup>1</sup>

#### INTRODUCTION

Nathan Leopold’s parole created a liminal time for the Leopold-Loeb narrative and Leopold’s place within it, and he knew it. After Leopold walked out the front gate of Stateville Penitentiary on March 13, 1958, it was the first time since his arrest in 1924 that his connection to Robert Franks’s murder was not necessarily the dominant fact of his public life. Even at the height of Leopold’s media campaign for parole, when Leopold worked assiduously to make his rehabilitation a part of his life’s narrative as it existed in the public sphere, the Franks murder defined Leopold. The murder was the reason he was a prisoner seeking parole and, though he refused to discuss it, the chief event against which he juxtaposed his middle-aged self when he spoke of his rehabilitation.

The opportunity for Leopold to start a new life on the outside of prison and beyond the Franks murder was potentially also the opportunity to for him define a new place in the public realm. Leopold, after all, had grown accustomed to his legal status defining him, first as a criminal suspect, then as a defendant, a psychological specimen, and for 33 years, a prisoner. The logical corollary would have been for him

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<sup>1</sup> Elmer Gertz, *A Handful of Clients* [HOC], (Chicago: Follett, 1965), 169.

to assume that his new status as a free man, deemed by the state of Illinois as fit to reenter society, could become the new dominant fact in representations of him.

Leopold began the effort to redefine himself through his use of the normality narrative while he was still in prison. And with *Life Plus 99 Years*, whose text was finalized before his release, he became far more aggressive about trying to replace other people's characterizations of him with his self-portrayal. But after his parole, he sought to turn the parole board's ruling on his rehabilitation into a legally enforceable redefinition of his public image.

In doing so, he revealed much of his own perceptions about his crimes and his proper place in public life. He continued to remain a subdued presence in American life, particularly for the first five years after his release, when he was still on parole and the board's order against publicity was still in place. His actions, however, betrayed an ambition that went far beyond the humility he expressed in the normality narrative. They reveal a sense of ownership over and entitlements regarding his public image that would have been imprudent to exhibit while he was still seeking parole; the Franks murder had, after all, occurred in part because of Leopold and Loeb's conviction that they were superior beings. It is also possible that, while he was pursuing parole, Leopold had not yet developed his sense of ownership over his story. It appears that the success of the normality narrative expanded Leopold's ambitions for his public image. While he was a prisoner, he developed the normality narrative as the means to an end; he cared about what people thought of him primarily insofar as it related to his chances at freedom. After he had that freedom, he began to protect his image as an end in itself. He could do little to bolster his image while the board's

publicity order was in effect, but he began to think that perhaps he could at least protect it from others.

With the dauntless encouragement of his attorney, Elmer Gertz, Leopold sought to assume ownership of his story through a long and ultimately unsuccessful campaign against the fictionalization that bothered Leopold most: Meyer Levin's novel *Compulsion* and the film that eventually derived from it. It was through his relationship with *Compulsion* that Leopold developed and articulated his proprietary sense towards his narrative, and he wanted conquering the franchise to set the precedent for his ownership over the case and his own life story. The campaign began subtly, before Levin had even begun writing the book and years before Leopold left prison, but it escalated over time. In 1959, Leopold filed a civil suit that consumed much of the next eleven years. He hoped to obtain a verdict that would secure him formal ownership of his crime, or a settlement that would have recognized that he had some rights over how people portrayed him. The suit officially dragged on until 1970, when his cause was finally, definitively, lost.<sup>2</sup> Leopold died the following year.<sup>3</sup>

If Leopold and Gertz had succeeded, the cacophony of competing voices trying to characterize Leopold-Loeb and explicate its significance could have been reined in and put largely under the control of Leopold himself. With a formal ruling granting him power over the narratives of his life, Leopold could either have sequestered those narratives altogether or – and his efforts in the 1960s indicate this scenario was more likely – he could have tried to use his power to mold his image to his liking. Either way, there was the potential for him to change the trajectory of his

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<sup>2</sup> Meyer Levin, *Compulsion* (New York: Simon and Schuster, 1956); Richard Fleischer, *Compulsion*, 103 minutes, (United States: 20<sup>th</sup> Century Fox, 1959).

<sup>3</sup> "Nathan Leopold Dies at 66," *Chicago Tribune*, 30 Aug. 1971.

narrative, or at least to make the normality narrative a more prominent part of it. Instead, his ultimate failure in the suit embodied his ultimate failure to control his image, and established just how little effect Nathan Leopold's parole and subsequent life was going to have on the Leopold-Loeb narrative.

#### THE SOURCES OF LEOPOLD'S ANIMOSITY TOWARDS *COMPULSION*

Leopold's opposition to the *Compulsion* franchise came in two phases, and the difference between the two reveals much of how his perception of the normality narrative, and his rightful place in public life, changed in the late 1950s and 1960s. The first phase began with the construction and publication of Levin's novel in the mid-1950s and continued through most of Leopold's parole campaign. During that time, Leopold opposed *Compulsion* primarily on the grounds that it hurt his chances for release. His reasoning was consistent with his general approach to publicity, although his objections to *Compulsion* were particularly strong. Leopold started to shift towards the second phase in the latter half of 1957, when he began to look beyond his parole and *Compulsion* started to transition to other media, becoming first a play and then, eventually, a feature film. In this phase, Leopold's principal objection to *Compulsion* was that it embodied his inability to control his public image. His opposition grew more aggressive during this time, culminating in the lawsuit against Levin and the producers of the novel and film.

On some level, Leopold's resentment of *Compulsion* was logical. The novel was a huge commercial success, adapted for the stage and screen to reach even wider audiences, and most gallingly for Leopold, it was the adaptation most closely tied to

the real Leopold and Loeb case.<sup>4</sup> Leopold's assertions that he thought the novel had hurt his parole were sincere, though inaccurate.<sup>5</sup> Leopold's concern with his parole case, however, does not explain why he continued to oppose the book *after* he received parole, and in fact risked irritating the parole board by taking steps towards suing over it within a month of leaving prison.<sup>6</sup> Leopold's singular resentment towards *Compulsion* thus indicates that, even before the second phase of his response to it, his objections ran deeper than his usual obsessive calculation with his parole prospects.

For several intertwining reasons, Leopold took Levin's work personally. He read the novel four times in prison, and fixated on it in a way that he did not with any other fictional or nonfictional exploration of his case.<sup>7</sup> When he was criticizing Levin's novel for an audience, as in a deposition or his memoir, *Life Plus 99 Years*, Leopold relied on three basic complaints: that Levin had presumed to know Leopold's innermost thoughts, that Levin had made fact and fiction indiscernible from one another, and that Levin's presumptions had caused pain to Leopold and his family.<sup>8</sup> Privately, Leopold had two other, less media-friendly problems with Levin's work, and he returned to them more often in his private correspondence than the reasons he expressed publicly. The first objection was that *Compulsion* bothered

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<sup>4</sup> Fleischer, *Compulsion*; Alex Segal, director, *Compulsion*, play, premiered 24 Oct. 1957, Ambassador Theater, Internet Broadway Database: <http://www.ibdb.com/production.php?id=2651>, accessed 24 Sep. 2012.

<sup>5</sup> Levin probably helped Leopold's parole prospects by arousing public interest in his case, and by telling a story largely compatible with Leopold's normality narrative, but Leopold seems to have been sincere in his conviction that anything which focused on his crime instead of his time in prison would hurt his case.

<sup>6</sup> EG to Franklin Stransky, 31 Mar. 1958, Leopold-Loeb Collection at Northwestern University (LLC at NWU), box 3, folder 13.

<sup>7</sup> Gertz, *HOC*, 11-12.

<sup>8</sup> Marcia Winn, "Should Leopold Be Paroled?" *Chicago Tribune*, 2 June 1957; Nathan Leopold, *Life Plus 99 Years*, (Garden City, NY: Doubleday, 1958), 369-371.

Leopold as a challenge to his sense of control over his image. The second was that Levin's commercial success made Leopold angry, perhaps because he thought something that was rightfully his had been taken from him.

Leopold never admitted that jealousy was a factor in his animosity, perhaps not even to himself, but Levin one-upped him constantly, and it clearly galled him. Leopold finished his first draft of *Life Plus 99 Years* in 1954, and then spent several years unable to find either a coauthor to help him rewrite the book or a publishing house that would take it as it was. Earlier that same year, 1954, Levin started writing *Compulsion*, having already found a tentative publisher before he even had a manuscript.<sup>9</sup> While Leopold was trying to publish his own version of his story, Levin's book became a bestseller. And when Leopold finally did sell his book in 1957, it was because of a feature about him in *Life* that even he admitted only came about because of the public interest in him that *Compulsion* aroused.<sup>10</sup>

When Leopold's book finally came out in March 1958, it did not sell nearly as well as Levin's had. *Life Plus 99 Years* sold very well initially, but its popularity was short-lived.<sup>11</sup> The hardcover was remaindered within 15 months, and Leopold's correspondence with Doubleday shows limited returns on the paperback editions.<sup>12</sup> *Compulsion* had stayed on the *Times* bestseller list for more than a year after its own publication, often vying with *Peyton Place* for the top slot.<sup>13</sup> Leopold's letters to Tim Seldes, his editor at Doubleday, reveal a near obsession with boosting his sales, and a

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<sup>9</sup> NL to Ralph Newman [RN], 21 Feb. 1954, The Nathan F. Leopold Collection at the Chicago Historical Society (NFL at CHM), box 34, folder 23.

<sup>10</sup> Leopold, *Life Plus 99 Years*, 374-375; "Nathan Leopold, of the Celebrated Leopold-Loeb Case, is Seen and Heard after 32 Years in Prison," *Life* 42, no. 9 (March 1957), 61-64, 69.

<sup>11</sup> NL to AG Ballenger, 1 May 1958, NFL at CHM, box 2, folder 24.

<sup>12</sup> Natalie Greenberg to NL, 8 June 1959, NFL at CHM, box 17, folder 17.

<sup>13</sup> "Vital Statistics," Robert Bergstrom Papers, MSS Midwest Bergstrom, Newberry Library, Chicago, box 6, folder 31, p. 6A.

tendency to measure his success in comparison to Levin's.<sup>14</sup> It must have stung when Seldes explained Leopold's comparatively poor sales by writing that "it is an unfortunate fact of life that COMPULSION has cut the financial ground from underneath you."<sup>15</sup>

Levin also beat out Leopold in adaptations for other media. Leopold was trying to sell the movie rights to *Life Plus 99 Years* within two weeks of his parole in 1958. He complained that the money Seldes was talking about for the rights was disappointing in comparison to the six-figure deal Levin reportedly got for *Compulsion*.<sup>16</sup> Seldes wrote that the rights needed to go to a small, independent producer, because "no major studio would touch Nate's story with the restrictions necessary" to honor Leopold's parole agreement against publicity.<sup>17</sup> And even if they did, Seldes added, studios would want the film to focus on the crime and trial, a deal-breaker for working with Leopold with which Seldes was very familiar. As it happened, Leopold never sold the rights to his book at any price. He found a few people willing to try to produce the movie independently, but none of them went past buying options on the rights. Leopold never gave up on trying to see a movie about himself made with his cooperation, and continually readjusting his expectations for the project throughout the rest of his life, but it never came to pass.<sup>18</sup>

Perhaps most maddeningly for Leopold, Levin's success came, to a great extent, from Levin's readiness to discuss the aspects of the case that Leopold would

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<sup>14</sup> These letters are collected in NFL at CHM, box 17, folder 17, and box 43, folder 11.

<sup>15</sup> Tim Seldes to NL, 9 Feb. 1959, NFL at CHM, box 43, folder 11.

<sup>16</sup> NL to Tim Seldes, 22 Mar. 1958, NFL at CHM, box 17, folder 17.

<sup>17</sup> NL to Tim Seldes, 22 Mar. 1958; Tim Seldes to EG, 25 Mar. 1958, pp. 1-2, NFL at CHM, box 17, folder 17.

<sup>18</sup> The two men who bought options on the rights at different times were Don Murray and Jerome Morris. NFL at CHM, box 15, folders 17 and 18, respectively. Leopold also discussed a possible sale of the rights with producer David Susskind; NFL at CHM, box 18, folder 18.



not. In early 1954, Levin, Leopold, and Ralph Newman, acting as Leopold's literary agent, met at Stateville Penitentiary to discuss the content of the prospective book. Leopold had already tried to dissuade Levin from writing a book altogether, and having failed in that attempt was hoping that the chance to coauthor *Life Plus 99 Years* would lure Levin away from pursuing his own project. Levin was eager for Leopold to grant interviews and provide copies of the 1924 court records. Newman was there in his capacity as Leopold's literary agent. Leopold and Levin remembered the meeting differently, but both recalled that they had irreconcilably different visions for the project. Levin wanted to create an in-depth portrait of the events of 1924, and to analyze Leopold's personality at the time of the crime, which entailed a focus on exactly the things from which Leopold wanted to divert the public's attention. Leopold held firm to his policy against discussing the murder, and the lure of a project with his cooperation and his name attached to it were not enough to alter Levin's ambitions.<sup>19</sup> Leopold pursued his collaboration with John Bartlow Martin and eventually published *Life Plus 99 Years* without a coauthor, while Levin went on to research his book independently and publish it as fiction.

#### THE COLD WAR BETWEEN LEOPOLD AND LEVIN, 1954-1958

For all Leopold's objections to Levin's project, the two rival authors maintained a public peace between 1954 and early 1958, but the veneer was superficial and brittle. Levin and the Leopold family came into conflict almost immediately after Leopold and Levin began to pursue their projects separately. Levin thought that his negotiations with Leopold had secured him certain rights over the

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<sup>19</sup> For Leopold and Levin's respective recollections of the meeting, see Leopold, *Life Plus 99 Years*, 367-368 and Meyer Levin, *The Obsession*, (New York: Simon and Schuster, 1973), 108-110.

story whether they collaborated or not. Levin tried first to pressure the Lebold family into giving him access to the 1924 sentencing hearing transcripts and the Hulbert-Bowman report in private, claiming that he had secured Leopold's promise before their collaboration fell through.<sup>20</sup> When his claims of individual entitlement did not work, Levin used a newspaper column he wrote to call on the family to make their copy of the transcripts public, arguing that they were too important for the family to keep sequestered.<sup>21</sup> The family arranged for Levin to read the trial transcript to quell his demands.<sup>22</sup> Levin continued to push for access to the Hulbert-Bowman report, but the family never gave it to him.<sup>23</sup>

Throughout Levin's writing of *Compulsion*, and especially after the novel's publication, Leopold's opposition to the project became stronger. By 1956, though Leopold did not feel as though he was in a position to openly combat Levin, he did pursue low-profile ways to thwart *Compulsion*. He considered trying to convince Levin's first would-be first publisher, McGraw-Hill, to publish his own book instead.<sup>24</sup> When the publisher stuck with Levin, either because Leopold's plan failed or he never implemented it, he had Bill Friedman threaten the company with a libel suit. Whether as a result of Friedman's letter or not, McGraw-Hill dropped the project.<sup>25</sup> After Simon and Schuster published the novel later in 1956 and it became a hit, Leopold's opposition only grew. He tried to use litigation or the threat of litigation to preempt the stage and screen adaptations. While Leopold was in prison,

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<sup>20</sup> Meyer Levin to William Friedman, 20 May 1954, EG at LOC, box 124, folder 6.

<sup>21</sup> Leopold, *Life Plus 99 Years*, p. 368.

<sup>22</sup> Ralph Newman, Counteraffidavit, LLC at NWU, box 31, folder 4, p. 4.

<sup>23</sup> Meyer Levin to John Bartlow Martin, January [n.y.], Papers of John Bartlow Martin at the Library of Congress, Manuscript Division, box 148, folder 14.

<sup>24</sup> NL to RN, 21 Feb. 1954, NFL at CHM, box 34, folder 23.

<sup>25</sup> NL to William Friedman: 20 Dec. 1956, NFL to CHM, box 35, folder 1; *Life Plus 99 Years*, p. 369.

the process never reached the point where Leopold would have had to go public with his opposition, but he was already thinking about how a lawsuit might either preclude adaptations of *Compulsion* or at least garner him some money.<sup>26</sup>

The only thing keeping Leopold and Levin's latent antagonism from developing into open hostility was each man's circumstances. Leopold did not feel that he could do anything publicly about Levin's novel, especially since Leopold focused his energies on parole. Levin, for his part, was probably unaware of the extent of Leopold's efforts against him, and somewhat obtusely did not understand that the Lebold/Leopold family's reluctance to help him with *Compulsion* might have indicated a lingering opposition to the project. His letters trying to pressure the family to release materials indicate an earnest sense of entitlement, and after the book's publication Levin thought of himself as Leopold's champion in his, Leopold's, pursuit of parole. He became one of Leopold's best-known spokesmen, boosting his own status as an expert and promoting his book in the process. He published an opinion piece entitled "Leopold Should be Freed" in the May 1957 issue of *Coronet* magazine, gave speeches to civic groups and the like on Leopold's behalf, sent the parole board letters from *Compulsion* fans who supported Leopold's release, and testified at Leopold's July 1957 clemency hearing, where Gertz also introduced the *Coronet* piece into evidence.<sup>27</sup>

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<sup>26</sup> NL to William Friedman, 20 Dec. 1956, NFL to CHM, box 35, folder 1; NL to VBA, 10 Jan. 1956, NFL to CHM, box 36, folder 1.

<sup>27</sup> Meyer Levin, "Leopold Should be Freed," *Coronet* 42, no. 1 (May 1957), 36-42; Photostats of the letters Levin forwarded are in: LLC at NWU, box 6, folder 6. On the *Coronet* piece going into evidence: Parole board Report: Visitors Heard on Behalf of Nathan Leopold, 9 July 1957, LLC at NWU, box 3, folder 7, pp. 30-37.

All of these activities mollified Leopold somewhat. He was especially fond of the *Coronet* piece, even trying to get Jacob Siegel at the *Daily Forward* to publish a Yiddish language version.<sup>28</sup> None of Levin's efforts, however, ever entirely offset Leopold's sense that the book wronged him.

Leopold started becoming more confrontational towards the *Compulsion* franchise soon after his failed bid for clemency in July 1957, the hearing at which Levin testified. Several internal and external factors brought about the change in Leopold's attitude. The stage adaptation of *Compulsion* had premiered on October 24, and Fox bought the movie rights in December, so Leopold had more reason to worry about Levin's interpretations attaining hegemony in defining the narrative of Leopold's life.<sup>29</sup> The publication of *Nothing but the Night* and *Little Brother Fate* earlier in 1957 indicated that *Compulsion* might have been starting a growth business in novelizing the case. However, none of those factors would have mattered without a new sense of empowerment from Leopold. For years, he had accepted the fact that what others published or produced about him was largely beyond his control, but after the 1957 clemency hearing, when Elmer Gertz became his sole attorney, Gertz and Leopold began prosecuting the media campaign for parole more aggressively than ever before. Most of their efforts focused on promoting Leopold's public image and presenting the strongest possible legal case to the parole board, but checking the power of the *Compulsion* franchise was an important corollary to those efforts.

From July 1957 to March 1958, while the media campaign for parole was at its peak, Leopold and Gertz tried to exert control over the stage and screen

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<sup>28</sup> Leopold discusses his fondness for the *Coronet* piece on *Life Plus 99 Years*, 376. NL to Jacob Siegel, 7 May 1957, NFL at CHM, box 35, folder 2.

<sup>29</sup> "Compulsion," Internet Broadway Database.

adaptations of *Compulsion* without arousing public attention. Gertz went to New York several times to try to force changes in the content of the stage adaptation of *Compulsion*, meeting with mixed success.<sup>30</sup> It seems that Leopold, working through Gertz, had been trying to force the play as much as possible into a rendition of the normality narrative. In seeking alterations to the play on Leopold's behalf, Gertz demanded "a clear depiction of the rehabilitation of Nathan Leopold" and the correction of "basic distortions...with respect to sexual matters creating the impression of homosexuality of a kind that did not actually exist."<sup>31</sup> On the latter point, Gertz elaborated in a later letter that "it is utterly false to say that a homosexual relationship existed between [Leopold] and Loeb. Dr. Kinsey passes lightly over what occurred, saying that it is frequent during that period of time."<sup>32</sup> Gertz maintained cordial relations with the producer throughout the negotiations, but Gertz was secretly taking steps towards possible later litigation.<sup>33</sup> Around the same time, he wrote to the producer of the film version of *Compulsion*, warning him that they should discuss the removal of objectionable material.<sup>34</sup>

Gertz and Leopold maintained amicable relations with Meyer Levin throughout the early discussions over the play and the movie. Levin was in a dispute

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<sup>30</sup> EG to NL, 12 Nov. 1957, LLC at NWU, box 5, folder 2.

<sup>31</sup> EG to ML, 22 July 1957, Papers of Elmer Gertz at the Library of Congress, Manuscript Division [EG at LOC], box 124, folder 7.

<sup>32</sup> EG to ML, 1 Oct. 1957, EG at LOC, box 124, folder 7. p. 1. Gertz made at least one other trip to try to prevent the play from coming to Chicago while Leopold's parole was under consideration. The play did not come to Chicago at that time, but whether that was because of Gertz's efforts or the play's lackluster run on Broadway is not clear. Plaintiff's Exhibit 6A, Bergstrom Papers, box 6, folder 31; Parole Board Visitors Report, 14 May 1958, p. 42; Roger Dettmer, "Could Chicago Support this Brilliant 'Compulsion?'" *Chicago American*, 4 Jan. 1959.

<sup>33</sup> Gertz surreptitiously bought a small share of the production so he could obtain inside information about the play, including financial records. He bought the share from Joshua Glasser, a friend who had already invested in the play, and made the purchase through a trust. He took care to remind his associates in the scheme to keep his involvement strictly confidential. LLC at NWU, box 32, folder 11.

<sup>34</sup> EG to Darryl Zanuck, 1 Nov. 1957, EG at LOC, box 124, folder 8.

with the play's producer over the script, and seems to have thought that accommodating Gertz would help him gain leverage in the fight.<sup>35</sup> Leopold discussed Levin and his work very little in public, and when he did his criticisms were fairly gracious. When he was promoting the normality narrative in an interview with Marcia Winn of the *Tribune*, for example, Leopold called the nonfictional elements of the book "amazingly accurate and...an enormous amount of research...masterfully put together."<sup>36</sup> He then elaborated that the book was only bad in that the fictional elements affected how people viewed him as a real person. "Mr. Levin weaves into his story...a good deal of fictional material, and it is done so well, so cleverly, that it is impossible for the general reader to know where fact stops and fiction begins. From my point of view of course, that is a little bit unfortunate."<sup>37</sup> Leopold repeated similar statements in private, but as his final campaign approached its zenith, he became far less effusive in his praise and far more blunt in his belief that he had been unfairly wronged.<sup>38</sup>

#### OPEN HOSTILITY, 1958-1959

Leopold's animosity became open, and his relationship with Levin and other producers of *Compulsion* more hostile, with the publication of *Life Plus 99 Years* in March 1958, roughly coincident with his parole.<sup>39</sup> The memoir was the definitive statement of how Leopold wanted people to perceive his life, and the aggression with which he criticized *Compulsion* indicates that Leopold also wanted the book to

<sup>35</sup> EG at LOC, box 124, folder 7 contains correspondence between Gertz and the producer, Michael Meyerberg, as well as Levin. The quoted passage is from: EG to NL, 20 Sept. 1957.

<sup>36</sup> Marcia Winn, "Should Leopold Be Paroled?" *Chicago Daily Tribune*, 2 June 1957.

<sup>37</sup> Winn, "Should Leopold be Paroled?" 8-9

<sup>38</sup> NL to William Friedman, 20 Dec. 1956, NFL at CHM, box 35, folder 1.

<sup>39</sup> The serialization of *Life Plus 99 Years* in the *Chicago Daily News* in November 1957 did not include Leopold's feelings about *Compulsion*.

supplant its biggest competitor in defining him. Similarly to the way he had in the Marcia Winn interview for the *Tribune*, Leopold backhandedly complimented the artistry with which Levin interweaved fact and fiction, but he also criticized Levin's approach in very blunt terms. He called Levin's presumption to psychoanalyze him and Loeb "ludicrous" and arrogant, and the insertion of fictional elements unfair: "No general reader can possibly know what is true and what contrived... That's what I felt diminished my own hopes for release. Mr. Levin accuses Judd Steiner of felonies I never dreamed of committing. He puts into Judd's mouth and very brain words and thoughts that were never mine." He also made it clear that Levin's work had caused him personal harm: "the impact of *Compulsion* on my mental state was terrific. It made me physically sick... More than once I had to lay the book down and wait for the nausea to subside. Emotionally, it caused me terrific shame and induced what the doctors would call a mild melancholia." The harm, moreover, was unfair: "what I did is horrible enough and the load of guilt I bear on my conscience is already heavy enough without this additional source of turmoil."<sup>40</sup>

For all Leopold's complaints about Levin's blending of fiction with nonfiction, some of Leopold's passages indicated that it was the portions of the book that *were* accurate which troubled him most, and the distinction is important for understanding Leopold's sense of his rightful place in American life. Leopold's bids for sympathy were more blatant in *Life Plus 99 Years* than in any other media endeavor. He emphasized his suffering, both in terms of his remorse and his experiences in prison, and he implied that his continued incarceration was preventing him from moving on to the full, productive life that he could have if he were allowed

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<sup>40</sup> Leopold, *Life Plus 99 Years*, 370.

to leave prison. In his complaints about *Compulsion*, Leopold implied that the book was a similar obstacle, but not just because of the felonies Levin invented for him. Rather, the book was an invasion of privacy: “I felt as I suppose a man would feel if he were exposed stark-naked under a strong spotlight before a large audience. I kept to myself as much as possible. Every stranger I eyed with the unspoken question in my mind: Wonder if he’s read it.” It is hard to believe Leopold found the attention from the book itself so troubling, rather than the tone of the attention. When he wrote the above passage, Leopold was an infamous child killer whose life had been under detailed scrutiny since 1924, so what likely bothered him more than the attention he got from Levin’s book was the nature of the exposure, a portrait that was unflattering and beyond his control.<sup>41</sup>

In another passage, Leopold implied that the very subject matter of the book was hurtful and inappropriate precisely because it connected to his own memories of 1924:

I hope – I know – I am in no sense today the same person as that horrible, vicious, conceited, ‘super-smart’ – and pathetically stupid – Judd Steiner... There’s only one trouble. I share a memory with the monster; a memory, that is, covering those things that actually did happen. *I have been firmly taken by the arms and forced to live through, step by step, in horrible, graphic detail, the worst three years of my life. It has been a traumatic experience.*<sup>42</sup> [emphasis added]

It is understandable that Leopold would not care to relive the Franks murder; a rehabilitated man who understood the horror of his crime would find the memory of it difficult. But in the above passage, taken with his other complaints about the book, Leopold indicates that it was not just unpleasant for him to be reminded of who he

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<sup>41</sup> Leopold, *Life Plus 99 Years*, 370.

<sup>42</sup> Leopold, *Life Plus 99 Years*, 370-371.



was before he rehabilitated, it was wrong. The ability to get on with his life entailed perhaps a private lifetime of trying to come to terms with the Franks murder, but in public, Leopold should be allowed to move past it. The structure of Leopold's book reinforced that message by largely ignoring his crime and focusing on his constructive life as a prisoner.

### TOWARDS LITIGATION

The combination of *Life Plus 99 Years*'s publication and his parole gave Leopold high hopes for the possibilities of the normality narrative to supplant other representations of the case. He wanted his release to be not just a turning point for his life, but for the public narratives of his life. At the end of March 1958, a few weeks after the book came out and Leopold left prison for Puerto Rico, he began taking steps towards making his claims of entitlement official. Gertz notified the board that Leopold intended to sue "the authors and publishers of the various novels about Leopold," but soon thereafter Gertz and Leopold clarified that their only immediate targets were the book and film versions of *Compulsion*.<sup>43</sup> Technically, the board could not stop Leopold from filing a lawsuit, but since the suit would be likely to generate news, the board could determine that Leopold had violated the publicity clause in his parole agreement by filing it. Consequently, Gertz and Leopold sought an explicit green light from the parole board to pursue legal redress, most aggressively through two special meetings of the parole board in May and June of

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<sup>43</sup> EG to Franklin Stransky, 31 Mar. 1958, LLC at NWU, box 3, folder 13. By the time of the Gertz's meeting with the parole board six weeks later, he was focused on the *Compulsion* franchise, and Gertz and Leopold's correspondence always focused on the book, play, and film versions of *Compulsion* as possible targets for legal action, not the authors of the other fictionalizations.

1958. Leopold was in Puerto Rico while these meetings took place, and Gertz was the sole spokesperson on his behalf.<sup>44</sup>

Gertz tried to convince the board that legal action was the most effective way to minimize publicity over the long term. His language tellingly revealed a sense of ownership over the Leopold-Loeb narrative: "I think the thing is going to be handled intelligently by us or get out of control. If we say we will keep our hands off, we will not do anything, everybody will have the field to himself and exploit it."<sup>45</sup> The board was skeptical. At both the May and June meetings, members wondered how a lawsuit would mesh with the desire for obscurity that Leopold professed at his February hearing.<sup>46</sup> Some members also posed questions that indicated they recognized the power Leopold was seeking over his image. If Leopold could grant or withhold the license to portray his story, he would be able to halt unflattering portrayals and shape flattering ones through his power to license his story, even if he was not violating his parole agreement by actively participating in those portrayals. Gertz even admitted as much when he conceded to the board that, though Leopold would not want to serve as a formal advisor to any production, *Life Plus 99 Years* could provide the guidelines for an authorized portrayal without additional input from Leopold.<sup>47</sup>

More than anything, though, the Board seemed to wish the entire matter would just go away. None of the members seemed thrilled at the prospect of the lawsuit, though the level of their hostility varied. But nor was anyone willing to

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<sup>44</sup> Parole and Pardon Board, Visitors Heard on Behalf of Nathan Leopold, 14 May 1958, LLC at NWU, box 3, folder 8; Parole Board Report, Parole and Pardon Board, Stenographic Report, 12 June 1958, LLC at NWU, box 3, folder 9.

<sup>45</sup> Parole Board Visitors Report, 14 May 1958, p. 10.

<sup>46</sup> Examples: Parole Board Visitors Report, 14 May 1958, pp. 34-35, Parole Board Visitors Report, 12 June 1958, p. 21.

<sup>47</sup> Parole Board Visitors Report, 14 May 1958, pp. 20-21.

explicitly forbid it. Even John Bookwalter, still Leopold's most resolute opponent on the Board, took a standpoint of vague menace without actually issuing an order:

We can't tell you what to do...if you want to continue to get him notoriety you are running the risk of getting him right back in Stateville...I am not going to spend the rest of my life, chasing around on a lot of personal problems for Leopold. He got a parole. He knows the parole rules...He is going to comply with the rules, or he is going to come back.<sup>48</sup>

Since a clarification of the rules was exactly what Gertz was pursuing, Bookwalter's impatience was perhaps unfair. But, though Bookwalter was more openly hostile than his fellows, his conclusions were consistent with theirs: Leopold could file the suit at his own risk, and the Board would then determine if it constituted a violation that warranted Leopold's return to prison.

Even after the two special hearings, Gertz continued to try to pin the board down to a firm "yes" or "no" on the lawsuit in correspondence, but could not get one.<sup>49</sup> In an impressive work of hairsplitting, board members made it clear at both hearings that they were not advising Leopold legally, and refused to involve themselves in specific actions Leopold took in advance of the suit, because doing so would have been overstepping their bounds. The board was instead interpreting how his legal actions would affect his parole.<sup>50</sup> Probably, some or all of the board wanted to deny Leopold the right to sue, but doubted its power to do so, and was hoping that a tone of disapproval would push Leopold to drop the suit or reach a settlement that kept the matter from going to court.

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<sup>48</sup> Parole Board Stenographic Report, 12 June 1958, p. 25.

<sup>49</sup> Gertz, *HOC*, 159-160.

<sup>50</sup> Parole Board Stenographic Report, 12 June 1958, p. 47.

On July 31, 1958, the board gave Gertz written permission to pursue an out-of-court settlement without publicity, but withheld permission for a full-on lawsuit. Gertz spent the next nine months trying to get Fox Studios, which distributed the film, Richard Zanuck, *Compulsion*'s producer, and Richard's father Darryl – president of the production company – to agree to editorial changes in the film's content and/or a cash settlement in exchange for Leopold's consent to the picture. According to Gertz, the changes he sought were meant to remove the harmful and inaccurate subject matter, which probably meant removing any content that bothered Leopold.<sup>51</sup>

In March 1959, negotiations fell through abruptly, and on June 2, 1959 Gertz sent a letter to the board requesting permission to file suit. The board remained noncommittal.<sup>52</sup> Bookwalter, taking over during Chairman Stransky's illness, repeated his stance that it was Gertz's place to give Leopold legal advice, not the board's, and neither denied nor granted the permission Gertz sought. Gertz responded with a letter copied to every member of the parole board on July 21, 1959, reading that he would file suit on October 1, unless they told him not to.<sup>53</sup> Not receiving such a message, on October 2 Gertz filed against Meyer Levin, Twentieth Century Fox Studios, the publishers of both the hardcover and paperback editions of *Compulsion*, Darryl F. Zanuck productions, and more than fifty theaters that ran the film.<sup>54</sup> The producers of the play got off the hook, probably because there were not any profits to collect.<sup>55</sup> Gertz and Leopold were seeking total damages of over 4.3 million dollars,

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<sup>51</sup> Parole Board Stenographic Report, 14 May 1958, p. 30.

<sup>52</sup> EG to Franklin Stransky, 19 Mar. 1959, LLC at NWU, box 3, folder 13.

<sup>53</sup> Gertz, *HOC*, 159-160.

<sup>54</sup> Gertz initially sued Twentieth Century Fox in the US District Court, but the federal case was eventually consolidated with the other suits in the Illinois system. Gertz, *HOC*, 159-160, 180.

<sup>55</sup> "Vital Statistics," 6A.

of which 2.9 million would come from Fox, and another 1.4 from the various other parties.<sup>56</sup>

### THE AIMS OF THE *COMPULSION* SUIT

The lawsuit was based in property rights. Gertz teamed up with an attorney named Harold Gordon, who eventually became co-counsel of record. According to Gertz, it was Gordon's theory "that there was a quasi-contractual right to recover for unjust enrichment against anyone who appropriated the name, likeness, life-story, and personality of another in a work of fiction."<sup>57</sup> Gertz and Gordon maintained that Leopold was entitled to a damages award because both the book and film *Compulsion* had appropriated Leopold's story, likeness, and, in much of the advertising, his name. The lawsuit claimed, in short, that Leopold owned his life story, including the story of his crime.

There were many advantages to this approach from a legal point of view, but perhaps the chief among them was that, unlike in a libel case, Gordon's theory did not require that Leopold demonstrate *Compulsion* had damaged his reputation. A confessed child murderer like Leopold would have found that difficult. If Gordon's theory held, moreover, it would establish a much broader precedent than would a libel award. Even if Leopold managed to secure a libelous verdict against the *Compulsion* franchise, the verdict would only have applied to *Compulsion*. A precedent that declared any fictionalization of Leopold's life made without his consent a violation of

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<sup>56</sup> "Leopold Sues Levin, Zanuck Over Novel, Asks \$1,405,000 in Damages," *Chicago Tribune*, 3 Oct. 1959, part 1, p. 8; "Biography of Robert W. Bergstrom. In the Inventory of the Robert W. Bergstrom Papers," The Newberry Library, Chicago, Ill.

<sup>57</sup> Gertz, *HOC*, 166.

his property rights, and would therefore preclude any unauthorized fictionalizations regardless of their content.<sup>58</sup>

Gertz and Leopold clearly hoped that the suit would have effects on representations of Leopold in public life that were less quantifiable but no less important than the effects the suit could have inside the legal realm. Building on the sentiments Leopold expressed in *Life Plus 99 Years*, Gertz later wrote in his memoirs that for Leopold's parole and rehabilitation to have true meaning, Leopold needed to be free not just from the Illinois prison system, but from the continuing public shame that portrayals of his "long expiated crime" crime unduly foisted on him.<sup>59</sup> From this perspective, the representation of Leopold the rehabilitated man needed to replace the representation of Leopold the murderer. Gertz admitted as much when parole board member John Bookwalter asked Gertz if there were any way to make a movie about Leopold with enough social value to justify its existence. Gertz responded "it seems to me that it would be meaningless unless it showed that this person who committed that horrible crime could be rebuilt in thirty-three years; could do useful work in prison and become entitled to parole, and would be entitled to charitable consideration."<sup>60</sup> Leopold and Gertz had hailed Leopold's parole as an official validation of Leopold's rehabilitation. With the initiatives against *Compulsion*, Leopold and Gertz were trying to cement that validation into the idea that Leopold had a *right* for his public image to center on his rehabilitation, that freedom and "charitable consideration" were nothing more than his due. The *Compulsion* lawsuit

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<sup>58</sup> Report of Proceedings, 1 April 1966, MSS Midwest Bergstrom, Newberry Library, Chicago, box 7, folder 39, p. 40.

<sup>59</sup> Gertz, *HOC*, 149-150.

<sup>60</sup> Parole Board Visitors Report, 14 May 1958, p. 20.

would be a judicially backed declaration to that effect, a precedent that Leopold owned his narrative and no longer needed to tolerate other people's representations of him.

Although Gertz avowed that he and Leopold were not "seeking to curtail the writings of legitimate historians or of reporters of news," *Compulsion* clearly became a target for their frustration at a range of discussions of the case.<sup>61</sup> Fiction, after all, was not the only realm that featured continuing reminders of Leopold's earlier life. Gertz explicitly connected the *Compulsion* lawsuit to two inflammatory tabloid articles that accused Leopold and Loeb of committing brutal crimes in 1924 for which neither man was ever caught. Gertz had wanted to sue over the articles, but he settled instead on the idea that a victory against the fictionalizations would deter similar ventures in nonfiction.<sup>62</sup> The tabloid pieces clearly would not have met Gertz's standard for "legitimate historians or...reporters of news," but Gertz also wished he could sue he could sue the publishers of the reprint of Maureen McKernan's primary source collection on the case. McKernan's book was first composed in 1924 with the cooperation of Leopold and Loeb's defense attorneys and was comprised mostly of excerpts from the sentencing hearing; the text could hardly be called unfair beyond the fact that it rehashed the events of 1924.<sup>63</sup>

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<sup>61</sup> Gertz, *HOC*, 149.

<sup>62</sup> Frank Lewis, "Nathan Leopold's Secret: Richard Loeb's Other Thrill Crimes," *Confidential* 6, no. 2 (June 1958), 12-15, 52, 54; HL McCormick, "The Savage Secret of Thrill-Killer Nathan Leopold's Hushed-Up Crimes," *Hush-Hush*, vol. 4, no. 17 (July 1958), 12-16, 60-62, 64. EG to Gladys Erickson, 25 Mar. 1958, LLC at NWU, box 7, folder 8. Gertz, *HOC*, 149; EG to Gladys Erickson, 25 Mar. 1958, LLC at NWU, box 7, folder 8; Parole board Visitors Report, 14 May 1958, pp. 28-29; Parole Board Stenographic Report, 12 June 1958, LLC at NWU, box 3, folder 9, p. 20.

<sup>63</sup> EG to NL, 10 Oct. 1957, LLC at NWU, box 24, folder 11; Nathan Leopold, Richard Loeb, Bobby Franks, and Maureen McKernan, *The Amazing Crime and Trial of Leopold and Loeb*, (Chicago: Plymouth Court P, 1924); Nathan Leopold, Richard Loeb, Bobby Franks, and Maureen McKernan, *The Amazing Crime and Trial of Leopold and Loeb*, (New York: American Library, 1957).

Leopold and Gertz's opposition, then, was either not restricted to inaccurate and unfairly exploitative portrayals of Leopold, or Leopold and Gertz considered anything not entirely to their liking to be unfair and exploitative. Either way, a victory against *Compulsion* would not have precluded such portrayals, but it would certainly have given their would-be producers something to think about.

#### THE PUBLIC CONTROVERSY OVER THE *COMPULSION* SUIT

Compared to Leopold's crime or parole, the filing of the *Compulsion* suit generated little press, in part because Leopold's parole agreement forbade him from speaking to reporters. But what coverage there was made the board very unhappy and Leopold and his family very nervous. The suit gave Leopold's critics fresh ammo with which to attack him, a commodity that had been scarce since Leopold reemerged in the public eye after World War II, and Leopold could not publicly defend himself.<sup>64</sup> Leopold's cousin, AG Ballenger, warned Leopold that even Leopold's friends reacted to the suit badly:

They take the position that you were very fortunate indeed to get a parole and recall various statements you had made that all you wanted to do is get lost and lead a quiet and peaceful life away from publicity, and they wonder why you don't do just that. They get all this from the various TV programs which broadcast your interview with the press, begging for the reporters to please leave you alone so that you could lead a quiet life.<sup>65</sup>

Leopold's most vociferous critic was Meyer Levin. After Levin received his subpoena, he began a publicity campaign against Leopold every bit as condemnatory as Levin's earlier campaign had been supportive of Leopold. Even years after Leopold's death and more than a decade after the suit was first filed, Levin continued

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<sup>64</sup> Gertz, *HOC*, 160-161.

<sup>65</sup> AG Ballenger to NL, 21 Oct. 1959, NFL at CHM, box 2, folder 24, p 1.



to express surprise and indignation that Leopold had turned on him after all he, Levin, had done for Leopold.<sup>66</sup> Perhaps Levin's most damning assertion was that the suit was evidence that Leopold had never changed, that in suing the man who had helped him, "Leopold is in effect saying that he is above and beyond the actions of ordinary humans and that if he wants to attack somebody, he can do it. He believes...he can make a superman code of his own."<sup>67</sup> Levin also alleged in other moments that the lawsuit was an effort to figuratively collect the Franks ransom three and half decades after his first attempt was thwarted.<sup>68</sup> Leopold had never wanted Levin to be a part of the suit, and at one point inquired to Gertz about settling with Levin for one dollar to get the outspoken novelist out of the case, but the deal never went through and Levin's public vitriol continued.<sup>69</sup>

The publicity that surrounded the suit almost cost Leopold the freedom he had worked so hard to secure. Almost immediately after Gertz filed the suit, when the media took up the story, the board began making its displeasure public.<sup>70</sup> John Kinney – who took over the chairmanship of the board after Franklin Stransky died – announced that that the board would meet to determine if Leopold had broken his parole.<sup>71</sup> It was a closed session; not even Gertz attended. Leopold, his family and friends, and Gertz spent some very tense days waiting until, on October 14, the board announced that it could not deprive Leopold of his legal right to sue, and therefore he had not violated his parole agreement by doing so. The decision was not unanimous.<sup>72</sup>

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<sup>66</sup> Levin, *The Obsession*, 219.

<sup>67</sup> Levin, quoted in Gertz, *HOC*, 165.

<sup>68</sup> Levin, *The Obsession*, 227.

<sup>69</sup> NL to EG, 26 Nov. 1959, NFL at CHM, box 28, folder 2.

<sup>70</sup> Gertz, *HOC*, 159-161.

<sup>71</sup> Quoted in Gertz, *HOC*, 161.

<sup>72</sup> *Chicago Tribune*, 15 Oct. 1959, pp. 1, 4.

In its public statement, the board rebuked Leopold for violating the spirit of his parole agreement:

It was Nathan F. Leopold's own expressed desire, in the parole hearing and in the subsequent parole agreement signed by him, that he would not voluntarily participate in any publicity activities. Inasmuch as this litigation will necessarily bring further publicity to him, it is the majority opinion of this board it was inadvisable for him to allow his attorney to file these suits.<sup>73</sup>

And so the board made clear both its opposition and its impotence. The suit went forward.

Although the worst had not happened, Leopold's friends and family worried that Gertz was too cavalier about the entire affair. Several of the people closest to Leopold had been against the suit from the start, including his brother Sam Lebold, his cousin Bal, and the Lebold/Leopold family attorney.<sup>74</sup> Even Ralph Newman, who did not generally side with the Lebold family against Gertz, thought it best to drop the suit and cautioned Leopold that "publicity...is the one area in which I don't think Elmer can think completely honestly."<sup>75</sup> Among other things, Newman thought Gertz's judgment might be clouded by the fear that dropping the suit would make him look foolish.<sup>76</sup> Leopold's friend Abel Brown warned that Elmer was reading into the

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<sup>73</sup> Quoted in Gertz, *HOC*, 161. A note on plural usage: technically, there were multiple *Compulsion* lawsuits, which is why both the parole board and Gertz usually used the plural in referring to them. For jurisdictional reasons, Gertz filed suit against Twentieth Century Fox in the US District Court, and the other defendants in Cook County, Illinois. Moreover, though his briefs and evidence were consolidated, Gertz was seeking 59 different summary judgments against the defendants for their different roles in committing the same basic tort: representing Leopold's life without his permission. The federal case, however, folded into the state one; the motion from the Cook County case bears responses from both groups of defendants under the same case number – 59 C 14087 – and at any rate all of the suits applied the same legal reasoning and evidence to petition for summary judgment, leading Leopold and occasionally Gertz, among others, to use the singular tense to describe the collective lawsuits. I refer to the litigation in the singular, i.e. "the *Compulsion* lawsuit," but have not altered the conjugations of sources that use the plural. Gertz, *HOC*, 160.

<sup>74</sup> AG Ballenger to NL, 6 Oct. 1958, NFL at CHM, box 2, folder 24; Sam Lebold to NL, 10 Oct. 1958; LLC box 27, folder 5.

<sup>75</sup> RN to NL, 11 Oct. 1959, NFL at CHM, box 15, folder 24.

<sup>76</sup> RN to NL, 29 Oct. 1959, NFL at CHM, box 15, folder 24, p. 2.

parole board's statement what he wanted to and ignoring the board's clear irritation. Brown complained that, whenever he broached that concern with Gertz, Gertz dismissed Brown's concerns and said that if the board tried to send Leopold back to prison Gertz would contest the action on the grounds that it violated Leopold's civil rights.<sup>77</sup> Whether Gertz could have won that fight or not, everyone else in Leopold's life, including Leopold himself, would have preferred to drop the suit than trigger such a confrontational relationship with the board.<sup>78</sup>

The friction over the suit indicated the extent to which Gertz had obtained influence over Leopold, as well as Gertz's own sense of empowerment over the Leopold-Loeb narrative. The close call with the board in October, the press reaction to the suit, and the advice of so many people he trusted finally persuaded Leopold to take action. On October 28, 1959, less than a month after Gertz filed the suit, Leopold suggested to Gertz that they drop it. Leopold spent most of the letter outlining the pros and cons of dropping the suit, adopting the tone of a man trying to convince Gertz of the action's necessity, not that of a client advising his attorney as to his wishes: "I know, in advance, that you will disapprove very strongly, and one of the principal things that holds me back from deciding to drop the suits is that I would, in a sense, be 'ditching you' – leaving you out on a limb." The near unanimous opposition to the suit from all but Gertz, however, led Leopold to believe that dropping the suit was the wisest course of action.<sup>79</sup>

Gertz's response was the most aggressive, manipulative, and recriminatory letter he ever sent Leopold. The attorney hit every nerve one could imagine in only

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<sup>77</sup> Abel Brown to NL, 17 Oct. 1959, NFL at CHM, box 3, folder 10.

<sup>78</sup> NL to RN, 2 Nov. 1959, NFL at CHM, box 2, folder 24.

<sup>79</sup> NL to EG, 28 Oct. 1959, p. 1; LLC at NWU, box 28, folder 2, p. 1.

two pages. Gertz opened by expressing “horror and shock” that Leopold was even thinking of dropping the suit, then spoke directly to Leopold’s greatest fear: angering the parole board. “I am confident that it [dropping the suit] would do you no good...with the Board,” he wrote. Gertz then mobilized Leopold’s anxiety towards his own purpose: “in fact, it would harm you with the Board.” Gertz did not specify how. He went on to try to drive a wedge between Leopold and the friends and family who opposed the lawsuit, which was to say almost all of them: “Some of those, like [Leopold’s brother] Sam, who would like you to drop the suits were among the very ones who did relatively little to get you out of prison. You would still be there if you took their advice.” That passage was not the only one in which Gertz used Leopold’s gratitude for his, Leopold’s, freedom, to draw a contrast between Gertz and the suit’s opponents. “However well meaning they are,” Gertz wrote of the people pressuring Leopold to back down, “they cannot be as well meaning as I am nor, assuredly, as well informed about the situation.”<sup>80</sup>

If Gertz’s confidence was not enough to win the day, he also had straightforward emotional manipulation, warning Leopold that dropping the suits “would do me great harm, both professionally and as a person...Surely as a person who did as much for your as anyone, I am entitled to be treated with some respect. I should not be kicked in the teeth just because you suddenly get the jitters.” In the penultimate paragraph, Gertz delivered a backhanded *coup de grace*:<sup>81</sup>

I don’t want the decision to be made on my account, but I tell you very frankly that anything done now I would take as unforgivable treachery. I have regarded you not simply as a client but as a dear friend, and have worked on

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<sup>80</sup> EG to NL, 29 Oct. 1959, LLC at NWU, box 28, folder 2, p. 1, 2.

<sup>81</sup> EG to NL, 29 Oct. 1959, LLC at NWU, box 28, folder 2, p. 1.

your behalf at great sacrifice. I think that I have earned the right to say “do nothing for the moment except sit back and think.”<sup>82</sup>

In the end, Leopold relented and the lawsuit moved forward. In 1969, while the case was still lurching towards its final disposition, Leopold again wanted to drop the suit, complaining that “We’ve been in the courts now nine and half years and...we have gotten just nowhere.”<sup>83</sup> Gertz again implored Leopold not to give up, still optimistic that a positive outcome would make it all worthwhile.<sup>84</sup> About a year-and-a-half later, the appellate court issued Leopold and Gertz their final, definitive defeat.<sup>85</sup>

There are several probable reasons for Gertz’s doggedness in the face of the opposition he faced from so many people, including his own client. First, and most obviously, he might have been genuinely convinced that the suit would benefit his client in the long run. Another possible reason was money, a motivation which, like the protection of Leopold’s image, Gertz and his client shared. Gertz’s work for Leopold had consumed much of his practice without yielding much remuneration, and a percentage of the recovery from a the civil suit was a way to remedy that.<sup>86</sup> But it is also possible that Gertz found representing Leopold to be a reward in itself. Leopold was Gertz’s most famous client, and Gertz loved the attention that representing Leopold had attracted during the parole campaign. Leopold’s parole meant that their professional relationship might be winding down. Leopold would have continued to use Gertz, but only on the few matters that would have come up in the course of living a quiet life as a parolee in Puerto Rico. The *Compulsion* lawsuit

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<sup>82</sup> EG to NL, 29 Oct. 1959, LLC at NWU, box 28, folder 2, p. 2.

<sup>83</sup> NL to EG and Harold Gordon, 16 Mar. 1969, NFL at CHM, box 12, folder 4, pp. 1,2.

<sup>84</sup> EG to NL, 2 Apr. 1969, NFL at CHM, box 12, folder 4.

<sup>85</sup> “Leopold Loses his Privacy Suit,” *Chicago Tribune*, 28 May 1970.

<sup>86</sup> EG to NL, 25 June 1958, LLC at NWU, box 27, folder 3.

gave Gertz a way to keep his bond with Leopold immediate and strong, and therefore to keep the highest profile case of his life going.<sup>87</sup>

### THE ADJUDICATION OF THE SUIT

Gertz and Gordon decided to try for a summary judgment in Leopold's favor instead of a jury verdict. A summary judgment is a legal assertion that the facts of the case are clear enough to obviate the need for a jury to determine them; all that is required is for a judge to determine how the law applies to those facts. In the *Compulsion* suit, Gertz and Gordon wanted a judge to determine, based on the clear appropriation of Leopold's story, likeness, and name in the film and the novel, that the franchise had violated Leopold's property rights and he was entitled to compensation. The strategy let the plaintiffs bypass the need to convince a jury of laypeople to award money to the country's best-known child murderer. The "verdict" would be, at least theoretically, entirely about the law, not Nathan Leopold personally. And since there was no jury to emotionally sway, keeping the case in front of a judge might also keep the defense from rehashing the details of 1924.<sup>88</sup>

Unfortunately for Gertz and Leopold, the lawyers for the various defendants had no intention of letting things proceed that smoothly. The defense did everything it could to derail and prolong the proceedings. It argued that the novel and the film *Compulsion* had only been suggested by the crime, and since they were not unequivocal accounts of Leopold's story, they did not infringe on his rights and the facts of the case were not clear enough to warrant a summary judgment. The various advertisements, press releases, dust jackets, and the like for the book and the movie,

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<sup>87</sup> Gertz, *HOC*, 111-112.

<sup>88</sup> Gertz, *HOC*, 182.

however, made that position difficult; they overtly touted *Compulsion*'s connection to the Leopold-Loeb case.<sup>89</sup>

The other mainstays of the defense all relied on making the civil case about Nathan Leopold instead of abstract points of law. Defense attorneys argued that the suit was a libel case in disguise, and the judge should either throw it out on the basis of false pretenses or, failing that, allow the defense to enter evidence on Leopold's reputation as it would in a conventional libel suit.<sup>90</sup> And, the defense maintained, even if the case remained strictly about property rights over Leopold's story, Leopold had done too much to make his life public to suddenly assert private ownership. Ephraim London and Leon Despres, representing Levin and the publishers of the novel *Compulsion*, pointed out that Leopold's life only became fodder for adaptation because of the Franks murder, and that by Leopold's own admission he had intended for the Franks murder to attract public attention, even if he had not planned to actually be caught. Moreover, after Leopold was caught, his cooperation with the press and with the defense alienists curtailed whatever pretense of privacy he might still have held: "Leopold exposed to complete public view his likeness, his life, his confessed crime, his family, and every aspect of himself... This intense publicity was planned, intended, achieved, and relished."<sup>91</sup> And according to Robert Bergstrom, the attorney for Fox Studios and the Zanucks, even if Leopold's rights had been violated, he could not have suffered emotional damages from the violations because "the

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<sup>89</sup> Perhaps because it anticipated a possible lawsuit, Fox Studios did specify in a press release for reporters and reviewers that the movie and the books were not journalism, but rather drama inspired by real events. The same memo, however, featured a summary of the historic case for reporters' reference in writing about *Compulsion*, somewhat belying Fox's position. "Vital Statistics," 6C-6D, 6I.

<sup>90</sup> Report of Proceedings, 1 Apr. 1966, pp. 57-58.

<sup>91</sup> Leon Despres and Ephraim London, *Brief in Opposition to Plaintiff's motion for Summary Judgments Filed on Behalf of Defendants: Meyer Levin, Simon & Schuster, Pocket Books, AC McClurg, and Brason Associates, LLC* at NWU, box 31, folder 2, p 11.

plaintiff was actually a worse character than the picture portrayed him.”<sup>92</sup> Bergstrom pointed to the 1957 serialization of *Life Plus 99 Years* as evidence that Leopold had no problem promoting his image as a murderer.<sup>93</sup>

The goal of these tactics, as much as addressing the issues of Leopold’s *legal* entitlements, seems to have been to provide reminders of who the plaintiff was, and in doing so to indicate that he was not *morally* entitled to anything. The first page of Despres and London’s brief on behalf of Meyer Levin and the publishers of the novel *Compulsion* describes the plaintiff as “a confessed sodomist, arsonist, burglar, automobile thief, conspirator, carrier of concealed weapons, robber by force and weapons, kidnapper, and murderer.”<sup>94</sup> The brief from Bergstrom, Fox Studios’s attorney, spent nearly 100 out of the 120 pages in his brief against Gertz’s motion for judgment discussing the 1924 crime. Defense lawyers were creating a pretext to argue for the relevance of Leopold’s life, character, and reputation similarly to the way that Gertz and Gordon had used a novel legal theory to try to render the same material irrelevant.<sup>95</sup>

The competing points of law dragged the suit out for about eleven years, from 1959 to 1970, but there were few big moments in the course of the case. One of the advantages of summary judgments, which must have appealed to both Leopold and the parole board, was that there were fewer chances for drama than in open court proceedings. The suit was instead an endurance contest of seemingly endless motions, countermotions, affidavits, counter-affidavits, briefs, arguments over jurisdiction, and

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<sup>92</sup> Report of Proceedings, 27 Feb 1965, Bergstrom Papers, box 7, folder 39, pp. 16-17.

<sup>93</sup> Report of Proceedings, 27 Feb. 1965, p. 63.

<sup>94</sup> Despres and London, “Brief in Opposition,” 1.

<sup>95</sup> Gertz, *HOC*, 184.



eventually, appeals, all of which frayed the nerves of the people involved for both sides and exasperated the jurists who oversaw it. Even something as presumably *pro forma* as Leopold's deposition entailed nearly a year of arguments between Gertz and the various defense attorneys.<sup>96</sup> When the defense finally did depose Leopold, the transcription of the proceedings ran to more than 500 pages, much of it taken up by childish snapping between the two sides.<sup>97</sup>

For a time in 1964-1965, it looked as though Leopold and Gertz might have won. In April 1964, Illinois Appellate Court Judge Thomas Kluczynski ruled that the use of Leopold's name to advertise the book and film versions of *Compulsion* constituted a commercial exploitation unprotected by the First Amendment. Kluczynski shied away from an unequivocal statement that unauthorized fictionalizations of Leopold life were inherently tortious, but his ruling would nonetheless have been a victory if it had stood. In actuality, however, the judge's decision changed little in how the case proceeded.<sup>98</sup> Kluczynski deferred judgment on the issue of damages in his official order, and the defense appealed his decision. At a hearing in early 1965, the new judge assigned to the case quickly found himself amidst the continuing hostility that characterized the suit, and felt compelled to remind counsel for both sides of basic professional etiquette: "Gentlemen, please be lawyers enough to restrain yourselves."<sup>99</sup>

The arguments dragged on until 1970, when a three-judge panel from the Illinois Supreme Court issued the final judicial word. Judge Daniel Ward wrote the

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<sup>96</sup> LLC at NWU, box 31, folder 1; Getz, *HOC*, 173-174.

<sup>97</sup> Deposition of Nathan Leopold, 15 Nov. 1960, Robert Bergstrom Papers, box 10, folder 54. For examples, see: 52, 76, 163, 232, 385.

<sup>98</sup> Thomas Kluczynski, quoted in Gertz, *HOC*, p. 188-190.

<sup>99</sup> Report of Proceedings, 27 Feb. 1965, Bergstrom Papers, box 7, folder 39, pp. 10-11, 90.

decision. Ward affirmed that *Compulsion* was protected in part because the public had an enduring interest in Leopold's crime that protected media in expressing ideas or conceptions of it. But Ward also cited Leopold's actions in the 1950s and 1960s as a part of the panel's reasoning:

It is of some relevance...that the plaintiff himself certainly did not appear to seek retirement from public attention. The publication of the autobiographical story and other writings and his providing interviews unquestionably contributed to the continuing public interest in him and the crime. Having encouraged public attention "he cannot at his whim withdraw the events of his life from public scrutiny."<sup>100</sup>

Leopold's life was officially a public possession. He would have to sit back while people made of it what they would. By the time of the verdict, however, novelists and filmmakers had lost interest in him.

### CONCLUSION – THE AFTERMATH OF LEOPOLD'S DEFEAT

The Leopold-Loeb case formally became public property with the Supreme Court's decision, but the value of that property had declined greatly by 1970. The lawsuit was in some senses a short-term victory even if Leopold and Gertz did not recover the grand sums for which they had been hoping. The suit helped bring the string of fictionalizations that began in late 1950s to a halt. Except for one minor short story in 1965, no new novel or film fictionalizations of the case came out in the ten years the suit was pending, or for decades afterwards.<sup>101</sup> Although Levin, Simon & Schuster, and Fox won, the \$40,000 they had to spend on their defense created a deterrent for other would-be writers and film producers regardless of the case's final

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<sup>100</sup> "Nathan F. Leopold, Jr., Appellant, v. Meyer Levin et al.," Famous Trials, [http://law2.umkc.edu/faculty/projects/ftrials/leoploeb/LEO\\_SUIT.HTM](http://law2.umkc.edu/faculty/projects/ftrials/leoploeb/LEO_SUIT.HTM), accessed 8 Oct. 2012.

<sup>101</sup> Higdon, *Crime of the Century*, 331; Jerome Weidman, "The Death of Dickie Draper." In *The Death of Dickie Draper, and Nine Other Stories*, (New York: Random House, 1965), pp. 3-47.

outcome. As Gertz had hoped, the suit spooked nonfictional as well as fictional writers. Five years after the *Compulsion* suit was thrown out – and four years after Leopold’s death – Leopold-Loeb historian Hal Higdon worried about antagonizing Elmer Gertz with the content of *Crime of the Century* (1975), the first researched-based monograph on the case. Higdon feared that he would spend years tied up in litigation the same way Levin had.<sup>102</sup>

In the longer-term, however, the *Compulsion* lawsuit was part of Nathan Leopold’s broader failure to control the future of the Leopold-Loeb case in American culture. From 1959 until his death in 1971, Leopold tried to add another chapter to the Leopold-Loeb story, one about his life as a free man, and to make his life after the murder the dominant characteristic of his life story. He wanted to relegate his crime to the status of prologue, something relevant to his life only to the extent that it contextualized his triumph and reinforced his expertise in matters of rehabilitation. His inability to do that revealed the limits of the normality narrative: people were more interested in it as the story of how a young man came to commit murder than one of a middle aged man came to outgrow it.

In his own lifetime, the public’s waning interest in his case proved to be an even greater obstacle to Leopold’s agenda than its skepticism. The press and the public simply were not interested in what he was pitching, nor were they even as interested in the Franks murder as they once had been. But Leopold’s final defeat came years after his death, when in the 1980s and 1990s the Leopold-Loeb case once again became a subject of numerous fictional adaptations. The new generation of

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<sup>102</sup> Hal Higdon to “Roy,” 16 Apr. 1975, Hal Higdon Research Papers About the Leopold and Loeb Case, Chicago Historical Society, box 1, folder 5.

explorations both challenged and reflected much of the postwar representations of Leopold's sexuality and his criminality in fiction and nonfiction. But they focused on 1924, and paid virtually no attention to Leopold's story of how he had changed in subsequent decades. Leopold had shaped and contributed to the Leopold-Loeb narrative in critical ways, but his ultimate failure in the 1960s meant that Leopold-Loeb would remain what, at base, it always had been: a murder story.

## CHAPTER SEVEN

### “THE LEOPOLD STORY IS FINISHED”: NATHAN LEOPOLD’S FINAL YEARS

“All I want is to get out of the spotlight.”

— Nathan Leopold, testifying before the parole board, February 5, 1958<sup>1</sup>

#### INTRODUCTION

Leopold lived for thirteen years after he left prison. During those years, he tried continuously to attract the same level of public attention as a free man that he had as a prisoner, and to, once again, reshape his public image. With the normality narrative and the media campaign for parole, he had crafted a persona as a model inmate and paragon of rehabilitation who hoped for the chance to prove himself on the outside. After he left Stateville Penitentiary, he struggled to find a new persona that would live up to the promise of the old one, but which he could also market for prestige and profit. He pursued various autobiographical film and book projects, and tried to bring the publicity value of his name to writing on other subjects. A few modest successes aside, he never attained the level of financial independence or public renown that he wanted.

His failure revealed the limits of his fame and his ultimate inability to leave the Franks murder behind, but it also revealed that the epoch of the case that had begun in the aftermath of 1924 was winding down in the 1960s and 1970s. For the first forty or so years after the Franks murder, after the initial sensation of the murder and the

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<sup>1</sup> Parole and Pardon Board, Stenographic Report, 5 Feb. 1958, Leopold Loeb Collection at Northwestern University [LLC at NWU], box 3, folder 6, p. 7.

sentencing hearing had passed, there was still a sense of connection to the case as a part of living memory, one kept vital by the perception that the Leopold-Loeb case was an issue of immediate relevance to contemporary readers. In the 1960s, the case became something at greater remove, part of a more remote past. Leopold's death in 1971 was an important moment in the shift away from that sense of immediacy, but it was not a turning point in itself. Events in the years before and after his death show his demise was just one element of a transition that was already underway.

### LEOPOLD'S LIFE AND AMBITIONS AFTER PRISON

By many standards, Leopold's life as a parolee was a phenomenal success. He realized much of the potential that his supporters had argued for in trying to secure his release, and took full advantage of his freedom to continue the same kind of polymathic, socially responsible work that he had begun in prison. Within a year of his arrival in the Puerto Rico, on top of his work as a medical technician for the Brethren Service Project, he had taken on extra projects that included trying to help local farmers diversify their crops, raising funds for a local hospital, and, with the Brethren, working on a vocational school for boys.<sup>2</sup> In 1961, he started teaching night school at the University of Puerto Rico while pursuing a Master's Degree in social work.<sup>3</sup> He got his degree that same year, coming in first in his class and being elected class president.<sup>4</sup> He obtained his social worker's license in early 1962.<sup>5</sup> In 1966, he

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<sup>2</sup> Nathan Leopold [NL] to Varian Adams, 29 Mar. 1959, CHM, box 2, folder 16.

<sup>3</sup> "Leopold to Teach at Puerto Rico U," *Chicago Sun-Times*, 15 Mar. 1961.

<sup>4</sup> Von Pittman, "Correspondence Study and the 'Crime of the Century: Helen Williams, Nathan Leopold, and the Stateville Correspondence School," *Vitae Scholasticae* 26, no. 2 (1 September 2009), 23. Photostat of NL's Diploma, LLC at NWU, 2 June 1961.

<sup>5</sup> NL to Sam Lebold [SL], 4 Feb. 1962, Nathan F. Leopold Papers at the Chicago History Museum [NFL at CHM], box 14, folder 8.

and the director of the social science research center at UPR received a \$125,000 grant for a three-year study of parasite transmission among humans, whose findings they presented in a paper delivered at the Annual Convention of the American Society for Tropical Medicine.<sup>6</sup> He did some work at a leprosarium as well, which he once referred to as “strictly volunteer work and a hobby.”<sup>7</sup> He became a licensed pharmacist in 1958, and a computer programmer in 1967.<sup>8</sup> He even, in a fashion, played Santa Claus, starting up an organization to collect money and dispense toys to local children at Christmas.<sup>9</sup>

Leopold’s social life thrived as well. He had a few girlfriends, probably a few boyfriends, and married in 1961.<sup>10</sup> His philanthropic projects and his famous name brought him friends among Puerto Rico’s high society, including the Governor’s wife.<sup>11</sup> He eventually became a very prominent, respected citizen himself, as well as a kind of B-list celebrity. At various times, he made the acquaintances of Hugh Hefner, Sammy Davis Jr., James Michener, and Roy Cohn.<sup>12</sup> He also, once off parole and free to travel, went all over the world.<sup>13</sup>

For all his accomplishments, though, there was something deeply dissatisfied in Leopold. Throughout his life after parole, he was determined to promote himself

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<sup>6</sup> TS of paper delivered at the Annual convention of the American Society for Tropical Medicine, 4 Nov. 1966, NFL at CHM box 20, folder 2; NL, Prospectus for *Grab for a Halo*, NFL at CHM, box 19, folder 2, p. 3.

<sup>7</sup> NL, Prospectus for *Grab for a Halo*, NFL at CHM, box 19, folder 2, p. 4

<sup>8</sup> NL to Elmer Gertz [EG], 23 June 1961, LLC at NWU, box 30, folder 1. NL, Prospectus of *Grab for a Halo*, NFL at CHM, box 19, folder 2, p. 7.

<sup>9</sup> NFL at CHM, box 18, folder 21.

<sup>10</sup> NFL at CHM, box 13, folder 11, and box 12, folder 15; Trudi Leopold to Elmer and Mamie Gertz, 11 Apr. 1971, LLC at NWU, box 9, folder 9.

<sup>11</sup> NL to Varian Adams, 29 Mar. 1959, NFL at CHM, box 2, folder 16.

<sup>12</sup> NFL at CHM, box 12, folder 21; NFL at CHM, box 6, folder 2; Leonard Lyons to NL and Trudi Leopold, 23 Sep. 1963, NFL at CHM, box 14, folder 24; NL to William Evans, 26 Dec. 1966, NFL at CHM box 6, folder 10.

<sup>13</sup> Higdon, *Crime of the Century*, 333.

and his autobiographical projects, even as he faced a constant barrage of setbacks, false starts, and often, blunt lack of interest from publishers and producers. He did not need these projects to live the quiet, austere life he had professed to want during the parole campaign. Publicity was no longer necessary to help him secure parole; in fact, with the parole board's caveat about publicity, several of the projects he pursued before his discharge from parole in 1963 could have cost him his freedom. Nor did he really need the money he hoped these projects would bring in either, though he seemed to think he did. Pursuant to instructions in his father's will, his brothers had set up a trust for him that was worth \$80,000 by 1959, and he had access to more money if his brother Sam Lebold or his cousin, AG Ballenger, thought he needed it.<sup>14</sup> He had an additional \$11,000 in cash that an aunt left to him.<sup>15</sup> Leopold might have lacked true financial independence, but he never had to worry about how to pay for his basic necessities.

Leopold, however, was convinced that he needed or deserved more money than he had. Maybe the rarefied wealth in which he grew up skewed Leopold's perception of what constituted poverty, or maybe he wanted to live in greater luxury than \$91,000 afforded in the 1960s. Either way, he was fixated on money, and on his perceived need for more of it. Many of his letters contain complaints about his meager finances, even as the complaints themselves inadvertently revealed relative affluence. Sometimes, for example, he tabulated his net worth based on the dividends his trust yielded without counting the principal that generated those dividends, and

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<sup>14</sup> SL to NL, 30 Oct. 1961, NFL at CHM box 14, folder 7; AG Ballenger to NL, 3 Nov. 1959, NFL at CHM, box 2, folder 24; AG Ballenger to the Parole Board, 12 Jan. 1953, NFL at CHM, box 2, folder 4.

<sup>15</sup> EG to Sam Goldfarb, 13 Jan. 1959, LLC at NWU, box 27, folder 5.



then complained about the relatively small annual income he was receiving.<sup>16</sup>

Similarly, in 1968, he complained that he was “broke” after paying cash for a \$32,000 apartment, without regard for the financial security indicated by being able to make such a purchase in the first place.<sup>17</sup>

It also galled Leopold that Sam had control of the trust, perhaps because the two of them did not get along and Leopold worried about the leverage that Sam’s power as trustee gave him over Leopold. Within a year of his release, Leopold asked his brother to turn the trust over to him for the sake of his “dignity and self-respect.” And when Nathan learned that Sam had taken out an insurance policy on himself with Nathan as beneficiary, Nathan tried to convince Sam to cash in the policy and turn the money over to him, Leopold.<sup>18</sup> Eventually, Sam did turn the trust over to Leopold, following the end of Leopold’s time on parole, but it did little to assuage Leopold’s pursuit of book and movie projects.<sup>19</sup>

Leopold appears to have possessed something he expressly claimed to have outgrown with the normality narrative: a sense that he was someone special, someone entitled. In addition to the money he hoped to get from selling himself, he wanted notice and acclaim for his morality, his good works, his intellect, and the extraordinary accomplishment that he had made in becoming the man he was. Perhaps he became addicted to the attention and accolades that his rehabilitation persona had garnered during the parole campaign. Even some of his closest friends,

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<sup>16</sup> NL to SL, 7 Oct. 1958, NFL at CHM, box 14, folder 5; NL to Arnold Maremont, 6 Mar. 1961, NFL at CHM, box 15, folder 1.

<sup>17</sup> NL to Ralph Newman, 20 July 1968, NFL at CHM, box 16, folder 2.

<sup>18</sup> NL to SL, 13 Nov. 1958, NFL at CHM, box 14, folder 5.

<sup>19</sup> NL to SL, 17 Oct. 1963, NFL at CHM, box 14, folder 9.

including Ralph Newman, remembered him as a publicity hound after his release.<sup>20</sup> Another friend recalled that, far from wanting anonymity, Leopold used to enjoy telling the staff in restaurants who he was so he could get better service.<sup>21</sup> It is also possible that Leopold thought growing rich and famous off of his life story was a way to realize his long deferred destiny. At nineteen, Leopold had been a young man of seemingly limitless potential and opportunities whose life had derailed when he went to prison. As an aging ex-convict with far fewer opportunities when he got out, save those related to his name, he might have come to believe that he could use his public profile to finally claim the kind of life he was always supposed to have.

Leopold was most blunt about his sense of entitlement in a letter to Gertz on March 4, 1962. Leopold was responding to frustrating news about Paul Henry, AKA Paul Magadanz, his former cellmate and possibly his former lover.<sup>22</sup> Gertz had been trying to help Henry get parole at Leopold's behest, as well as permission to go to Puerto Rico. Leopold was very much looking forward to reuniting with Henry, and since February, when it became known that Henry was going to be paroled, Leopold had been sending letters to Henry via Gertz in anticipation of their reunion. (Leopold pretended to be Henry's uncle to get around prison regulations against communication between prisoners and parolees.)<sup>23</sup> Then, at the end of February, Gertz wrote to Leopold that, if the board did permit Henry to go to Puerto Rico, it would probably insist that Henry and Leopold not see each other. A parole official

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<sup>20</sup> Hal Higdon notes on interview with Ralph Newman, Hal Higdon Research Papers on the Leopold and Loeb Case at the Chicago History Museum (HH at CHM), box 2, folder 7.

<sup>21</sup> Hal Higdon notes on interview with Mr. and Mrs. Bill Evans, HH at CHM, box 2, folder 7.

<sup>22</sup> NL to EG, 4 Mar. 1962, LLC at NWU, box 30, folder 2; EG to NL, 28 Feb. 1962, LLC at NWU, box 30, folder 2; Trudi Leopold to Elmer and Mamie Gertz, 11 Apr. 1971, LLC at NWU, box 9, folder 9.

<sup>23</sup> EG to NL, 16 Feb. 1962, box 30, folder 2. This folder contains other letters where Leopold asked Gertz relay messages to Henry.

had deduced that Gertz had become involved in Henry's case at Leopold's prompting, and although Gertz assured the board that Leopold's interest was "paternal" (read: not homosexual), Gertz still thought that Henry would have to serve his parole at a distance from Leopold.<sup>24</sup> Disappointment and anger caused a unique slip in Leopold's constant image discipline, leading him to write what was possibly the most emotionally honest and expressive letter of his life.

Heated emotions might have affected Leopold's sentiments in the March 4<sup>th</sup> letter, but they also brought out a unique frankness in him about how he perceived his life and his relationships with people. He accused Gertz of having a large ego that made him blind to the fact that he could be patronizing and controlling. Leopold went on to enumerate a list of instances in which he, Leopold, had disagreed with Gertz, and then been, in his own estimation, proven right. Leopold's most surprising expression of anger was over Gertz's acquiescence to the publicity clause in Leopold's parole agreement, which kept Leopold from being able to pursue press attention until he was off parole. Apparently, by early 1962 Leopold bristled at his inability to self-promote so much that he forgot how grateful he had once been just for freedom.<sup>25</sup>

Leopold went on to complain about his brother Sam. Leopold felt that Sam had been condescending and controlling towards him since at least 1924, apparently not appreciating that, even if that were true, perhaps he had given Sam reason to treat him that way. Sam, for his part, had never forgiven Leopold for the pain that the Franks murder had caused the family, and did not approve of Leopold's penchant for

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<sup>24</sup> EG to NL, 28 Feb. 1962, NFL at CHM, box 10, folder 7.

<sup>25</sup> NL to EG, 4 Mar. 1962, NFL at CHM, box 10, folder 7, p. 3.

publicity, during or after the parole campaign. He seemed to envision for Leopold the kind of life that Leopold himself had once claimed to want, one spent working at jobs that attracted little attention in a quiet corner of the world, and Sam wanted to control Leopold as best he could to bring that life about. Sam's power over Leopold's trust, which an independent fortune would have let Leopold break, gave him leverage in that endeavor.<sup>26</sup>

Leopold had some choice words for Joseph Ragen and the "ignorant, sadistic mother-fuckers in the employ of the state" as well. Ralph Newman and Gertz, Leopold wrote, were godsend because, unlike Sam and the prison guards at Stateville, they did not treat him "as a Mongoloid idiot, who didn't know how to wipe his own ass or blow his own nose." To show some of his power in the face of what he saw as unfair treatment, Leopold listed the parole rules he had violated almost as a badge of honor: staying out after curfew, communicating with prisoners and ex-prisoners, visiting brothels, bars, and casinos, drinking, owning guns (for collecting ornithological specimens), and leaving the country. His infractions were hardly monstrous, but if made public, they would have damaged the model citizen image he so loved.<sup>27</sup>

It is hardly shocking to discover that Leopold and his brother had a strained relationship, or that an ex-prisoner who was incarcerated for 33 years harbored hard feelings towards the officials who oversaw him, or that a parolee violated the rules of his release in ways he perceived to be harmless. What is remarkable is the extent to which Leopold seemed to feel personally wronged by his experiences and his

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<sup>26</sup> NL to EG, 4 Mar. 1962, NFL at CHM, box 10, folder 7, p. 6.

<sup>27</sup> NL to EG, 4 Mar. 1962, NFL at CHM, box 10, folder 7, p. 7, 5

treatment. In the letter, written in the heat of the moment and without concern for image management, his remorse at having once committed a murder out of a sense that he was above the law was nowhere to be found, only his secret contempt for the rules that dominated his life. He defended his violations of the parole board's regulations by invoking the examples of people who defied unjust rules, George Washington and the Founding Fathers, Mohandas Gandhi, William Tell, people who protected Jews in Nazi Germany, and the operators of the underground railroad. He showed no recognition of the possibility that perhaps his analogy was flawed, that he had forfeited his claims to autonomy and trust with the Franks murder. His letter was, in sum, that of a man who felt he deserved far better from life than he was getting, and was fed up with the people he blamed for holding him back.<sup>28</sup>

#### LEOPOLD'S RELATIONSHIP WITH THE MEDIA, 1958-1960

Leopold's post-prison media activities were a centerpiece of his plans to secure the life he wanted, but the precise natures of those plans varied. When he was in prison, freedom was an absolute goal, which he used the normality narrative to pursue with rigid discipline and single-minded focus. On the outside, his priorities became more complex. Sometimes, especially in later years, he revealed a surprising comfort in capitalizing on the "scare value"<sup>29</sup> of his name: "I am willing, under certain circumstances, to trade on my notoriety -- but only where there is sufficient financial inducement."<sup>30</sup> Other times, however, he claimed to prefer a small project with little remuneration if it meant a better portrayal of him, and the substance of all of the

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<sup>28</sup> NL to EG, 4 Mar. 1962, NFL at CHM box 10, folder 7, pp. 4-5.

<sup>29</sup> NL to RN, 3 Aug. 1961, NFL at CHM, box 15, folder 24.

<sup>30</sup> NL to EG, 3 Aug. 1964, LLC box 35, folder 1, p. 2.

projects he pursued showed a clear and consistent insistence that the content meet his terms. Some of his flexibility might have come from the passage of time and the readjustment of expectations, especially in the late 1960s. But generally speaking – though he did not say as much – Leopold appears to have thought that both fame and fortune were within his grasp.<sup>31</sup>

Leopold's parole was an important turning point in his relationship with the media – the moment when he had to begin articulating a non-prisoner persona – but the end of his time on parole in 1963, when he became a fully free citizen, changed little. He became more aggressive and overt in his publicity efforts because he was no longer burdened with the parole agreement that required him to shun publicity, but that was a change of tactics rather than goals. He had never wanted to agree to the publicity restriction, and during his five years on parole he obeyed it only to the extent that he had to, both to appease the board and to appear to be remaining faithful to his own professed wishes.<sup>32</sup> He was eager for ways to violate it in spirit as long as he thought he could avoid negative repercussions from the board or damage to his image, being fully aware that sometimes his efforts “would be definitely against parole regulations...and not in accord with what I have repeatedly said about my own attitude and desires.”<sup>33</sup>

Leopold tested the parole board very soon after his release with the creation of The Leopold Foundation, an organization founded and run entirely by Leopold and his allies. Leopold was the Foundation's president, Elmer Gertz was vice president,

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<sup>31</sup> NL to Abel and Katharyn Brown, 31 Mar. 1964, NFL at CHM box 3, folder 11. NL to Ralph Newman and EG, 9 Mar. 1961, NFL at CHM, box 16, folder 1.

<sup>32</sup> NL to EG, 4 Mar. 1962, CHM box 10, folder 7.

<sup>33</sup> NL to RN, 3 Aug. 1961, NFL at CHM box 15, folder 24.

Ralph Newman was secretary, and Leopold's friend Abel Brown was treasurer. The organization's primary purpose was supposed to be to distribute the proceeds from *Life Plus 99 Years* to fund research into juvenile delinquency, but the foundation's charter was broad, allowing for the possibility of expansion and fundraising.

As it happened, however, the foundation was dissolved two months after its incorporation, having never existed except on paper. The parole board sealed the foundation's fate at two meetings with Gertz in May and June of 1958, the same two meetings where they discussed Leopold and Gertz's desire to take legal actions over *Compulsion*. Leopold had told the board of his intentions to donate proceeds from *Life Plus 99 Years* at his parole hearing, but the board members were still taken aback by Leopold's creation of an eponymous nonprofit of which he was president, founded one month after his parole. They had expected something lower in profile, a simple donation to one or more existing organizations, an unincorporated trust, or an independent organization that was founded at a later date.<sup>34</sup> Gertz asserted that Leopold had started the foundation to ensure that people knew he was following through on his pledges to spend his life atoning for the Franks murder, but the board was unmoved. Gertz's stance was after all, a tacit acknowledgment that the foundation was meant to keep people aware of Leopold's activities. Chairman Stransky pointed out the contradiction, and saw it as an end-run around the publicity clause: "He wants to get out of sight -- but the reality is, in setting up this foundation which bears his name, and which has him as an incorporator and a director, it creates

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<sup>34</sup> Parole Board Stenographic Report, 12 June 1958, LLC at NWU, box 3, folder 9, p. 14-15; EG to NL, 15 May 1958, LLC at NWU, box 27, folder 2.

a new entity, which is ostensibly another personality, legally separate from the man that is on parole.”<sup>35</sup>

Stransky was probably right. By founding the organization, then doing nothing with it while he waited to see if the board approved its existence, Leopold was probing for a way to keep his public profile up without antagonizing the board.<sup>36</sup> If the foundation had endured, it would have bolstered Leopold’s contemporary profile while also reinforcing his characterizations of the Franks murder as an act driven by youthful maladjustment. The foundation, as Gertz put it, “could work with troubled children, juvenile delinquents, the problems that created Leopold in the first instance.”<sup>37</sup> When Gertz was trying to sell the board on legal action over *Compulsion*, he floated the possibility that Darryl Zanuck, owner of the film’s production company, could make a donation to the foundation instead of a payment to Leopold. Gertz was trying to show the board that Leopold was not after financial gain, but such a large donation, particularly coming from the producer of *Compulsion*, would have helped turn the foundation into a monument to Leopold’s righteousness as a reformed man.<sup>38</sup> Once Gertz agreed to dissolve the Leopold Foundation at the June 1958 meeting, it was clear that Leopold had not found the indirect route to self-promotion for which he, Leopold, had been hoping.<sup>39</sup>

The two special meetings in May and June, followed by the third, in October – when the board seriously considered revoking Leopold’s freedom over the

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<sup>35</sup> Parole Board Stenographic Report, 12 June 1958, p. 13

<sup>36</sup> In April, before the two Board meetings, Abel Brown got a little overzealous about the Foundation, and Leopold advised him to stop until he knew for sure the Board would approve the Foundation’s existence. NL to Abel Brown, 10 Apr. 1958, and Abel Brown to NL, 30 Mar. 1958, NFL at CHM, box 3, folder 10.

<sup>37</sup> Parole Board Stenographic Report, 14 May 1958, LLC at NWU, box 3, folder 8, p. 8.

<sup>38</sup> Parole Board Stenographic Report, 14 May 1958, pp. 9-10

<sup>39</sup> Parole Board Stenographic Report, 12 June 1958, p. 47.



*Compulsion* suit – left Leopold a little wary of pushing his luck with the board any further during his stint on parole. Instead of pursuing new vehicles through which to sell himself, he focused on the one he already had: *Life Plus 99 Years*. The book's publication predated the publicity restriction, albeit by only about a week, so while Leopold could not openly promote the book, he could profit, personally and financially, from its success.

The problem was that, after an impressive opening, sales of *Life Plus 99 Years* quickly began to flag. Leopold had been convinced for years that the book would do well. In 1952, soon after his collaboration with Gladys Erickson for the series of articles in the *Chicago American*, and soon before he began writing *Life Plus*, Leopold expressed the belief that “books in this country apparently sell, not on the basis of what is in them nearly so much as the publicity value of the author's name. And on that basis, I've a hunch that anything I wrote would sell like hot-cakes.”<sup>40</sup> When the book first came out in March 1958, it looked like he was right; *Life Plus* sold almost 19,000 copies in less than a month. But it only sold 2,000 more copies the month after that,<sup>41</sup> and the total run for the hardcover edition wound up being fewer than 25,000.<sup>42</sup> The book's March sales no doubt got a boost from the coincidence of the book's release with Leopold's parole, and then as Leopold faded from the public eye, so too did his memoir. Leopold was convinced, however, and remained so for years afterward, that the problem was insufficient marketing and distribution. He remained sure that people would buy his book if only they knew about it and had the

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<sup>40</sup> NL to Foreman Lebold, 10 Sep. 1952, NFL at CHM, box 1, folder 9, pp. 3–4.

<sup>41</sup> NL to AG Ballenger, 1 May 1958. NFL at CHM, box 2, folder 24.

<sup>42</sup> Samuel Vaughan to NL, 18 Jan. 1968, NFL at CHM box 19, folder 2; in an unpublished version of *Crime of the Century*, Higdon put the number at fewer than 20,000; Higdon, *Crime of the Century*, 326.

chance. He said as much in numerous letters to his editor, Tim Seldes. Seldes was always polite and conciliatory, but unconvinced.<sup>43</sup>

Leopold's ambitions and Seldes's expectations came into a similar conflict over the movie rights. After Leopold's parole, when the publicity clause was in place, Leopold had been eager to see a movie deal move forward, but Seldes demurred, claiming he did not want to negotiate unless he knew there would be no legal encumbrances.<sup>44</sup> Seldes also reckoned that, any legal issues aside, Leopold's refusal to focus on 1924 would force them to deal with a small independent producer instead of a big studio.<sup>45</sup> By the fall, even though the board had green-lighted the negotiations and Leopold was still urging him to proceed, Seldes had become pessimistic about seeing the movie in theaters and was pursuing a TV production. Even that never panned out.<sup>46</sup>

#### LEOPOLD'S RELATIONSHIP WITH THE MEDIA, 1961-1963

Leopold remained convinced that the public would be eager for projects with his name attached to them, if only he were allowed to pursue and promote them, and in 1960 and 1961 he began a prolonged effort to reenter the public eye and claim the lifestyle to which he felt entitled. First, he tried to get out from under the parole board's supervision. On December 14, 1960, he petitioned the Illinois board to terminate his parole, beginning an endeavor whose final outcome pended for 11

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<sup>43</sup> NFL at CHM, box 17, folder 17.

<sup>44</sup> NL to Tim Seldes, 22 Mar. 1958, NFL at CHM, box 17, folder 17.

<sup>45</sup> Tim Seldes to EG, 31 May 1958, NFL at CHM, box 17, folder 17; Tim Seldes to EG, 25 Mar. 1958, NFL at CHM, box 17, folder 17; Tim Seldes to EG, 16 Apr. 1958, NFL at CHM, box 17, folder 17.

<sup>46</sup> NL to Tim Seldes, 26 Oct. 1958; Tim Seldes to NL, 7 Nov. 1958, NFL at CHM, box 43, folder 11.

months.<sup>47</sup> Second, in anticipation of having the freedom necessary to trade on his name, Leopold tried to put together new projects to reenergize that name's value. He had begun writing a sequel to *Life Plus 99 Years* the previous May, immodestly titled *Grab for a Halo* (sometimes referred to as *Snatch for a Halo* or *Reach for a Halo*), and he tried to put together an independent deal for a film version of *Life Plus 99*, which he could then present to Doubleday, who owned the rights.<sup>48</sup> Both projects were early enough in the development stages that Leopold could pursue them without the parole board finding out.

Leopold's record as a parolee was good, but the sheer audacity of his request made success unlikely. In order to succeed, Leopold needed to convince the board members, who it was not even clear had the authority to terminate a parole early, that the continued restrictions of his parole – the legal status and travel, work, and residency restrictions – were an intolerable hindrance to his ability to build a life for himself on the outside.<sup>49</sup> Moreover, since the parole board routinely discharged parolees who maintained a clean record for five years following their release, Leopold had to demonstrate that a discharge less than two-and-a-half years in future, in 1963, would be too late.<sup>50</sup> Paradoxically, Leopold also had to convince the members that his release would not lead to any radical changes in his lifestyle that might spook them. And, compounding all of these challenges, the board had disarmed

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<sup>47</sup> NL to Illinois Parole and Pardon Board, 14 December 1960, LLC at NWU, box 3, folder 12; "Kerner Denies Leopold's Bid to End Parole," *Chicago Daily Tribune*, 16 Sep. 1961.

<sup>48</sup> NL to EG, 31 May 1960, NFL at CHM, box 29, folder 1. NL to Ralph Newman and EG, 9 Mar. 1961, NFL at CHM, box 16, folder 1. For simplicity's sake, I refer to the book as *Grab for a Halo* throughout this dissertation. For instances of alternative titles, see: NFL at CHM, box 43, folder 11, and Leonard Lyons, "The Rehabilitation of Nathan Leopold," *Saturday Evening Post* 236, no. 21 (1 June 1963), 66-68, p. 68.

<sup>49</sup> Visitors Heard on Behalf of Prisoner, 11 July 1961, LLC at NWU, box 3, folder 10, p. 35.

<sup>50</sup> Ray Brennan, "Full Pardon Asked by Leopold to End Parole Restriction" *Chicago Sun-Times*, 22 June 1961.

Leopold of his most effective tool: his parole agreement precluded him from rallying public support or enthusiasm in his favor. He could, and did, collect and submit letters of support from people he knew in Puerto Rico, including the governor, but it is unclear how much sway those letters had with an Illinois board beholden to its local constituency.<sup>51</sup>

In his letter to the board asking it to consider his request, Leopold claimed that he needed discharge from parole precisely in order to fully realize his commitment to a low-profile life spent in public service in Puerto Rico. At the time he applied, Leopold was on leave from his work for the Brethren Service to get a Master's Degree in Social Work, with plans to graduate in June 1961. Neither of the career avenues he hoped to pursue with the degree, he claimed, as a licensed social worker or on the faculty at the University of Puerto Rico, could move forward as long as he was still technically serving a prison sentence. He asserted that his ability to pursue a stable domestic life was stymied as well. He wanted to marry a woman named Gertrude "Trudi" Garcia de Quevada, but would not subject her to the restrictions he faced as a parolee. He also expressed a desire to travel and a concern that parole made him vulnerable to blackmail from anyone who could accuse him of having misbehaved. In all, it was the letter of a man who knew that the board would be hesitant to relinquish its control of him, and wanted to show that he would not use his freedom for anything of which it disapproved. He even offered to promise, if released, that he would not return to Illinois until 1963, when it would have been his

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<sup>51</sup> Many of these letters are gathered in: LLC at NWU, box 29, folder 2.

right to do so under a standard discharge anyway. He assured the board he had no desire to return to his home state permanently.<sup>52</sup>

The discharge application was front-page news in Chicago, but Trudi quickly came to dominate the story. Public relations strategy played a role in the marriage plans even before the engagement. Trudi had tried to sell Leopold on the idea of matrimony on the grounds that it would make a good impression on the parole board and help his chances at an early discharge, an idea Gertz seconded.<sup>53</sup> But Leopold, not wanting to marry before he had a discharge, told the board that he would only marry Trudi if they approved his petition, so that he could marry her as a free man.<sup>54</sup> Whatever Leopold's intentions, the prospect of his marriage soon took on a life of its own in the press. Reporters might not have considered freedom as dramatic a shift from parole as did Leopold – he was, after all, living 2,000 miles away – but Trudi gave them a concrete lifestyle change to emphasize, adding a tinge of love and redemptive romance to Leopold's hopes for his post-discharge life. The *Tribune*, *The Sun-Times*, and the *American* all ran interviews with Trudi and/or excerpts from a letter she had sent to a friend describing her relationship with Leopold.<sup>55</sup> *Newsweek* and the *Washington Post* ran brief notices on the planned marriage that did not even mention the parole application.<sup>56</sup>

All the attention put the parole board in an awkward position, and at least one board member said publicly that Leopold's pseudo-ultimatum about Trudi had hurt

<sup>52</sup> NL to Illinois Parole and Pardon Board, 14 Dec. 1960, LLC at NWU, box 3, folder 12.

<sup>53</sup> NL to EG, 21 June 1960, LLC at NWU, box 29, folder 1; EG to NL, 15 Dec. 1960, LLC at NWU, box 29, folder 3.

<sup>54</sup> NL to Illinois Parole and Pardon Board, 14 December 1960, LLC at NWU, box 3, folder 12, pp. 3-4.

<sup>55</sup> "Fiancée tells of Leopold and Romance," *Chicago Sun-Times* 12 Jan. 1961; Gladys Erickson, *Chicago American*, 15 Jan. 1961; "Hint Leopold Seeks Permit to Wed Widow," *Chicago Daily Tribune*, 11 Jan. 1961.

<sup>56</sup> "Transition," *Newsweek* 57, no. 4 (23 Jan. 1961), p. 63; *Washington Post*, 15 Jan. 1961, p. A3.

his chances.<sup>57</sup> To deny Leopold's petition would have made the board look like a bureaucratic obstruction to two people's happiness, but to grant Leopold's petition could appear to validate Leopold's claims that the conditions of his parole were so onerous that he needed to shield his love interest from them. The parole board was also unlikely to appreciate Trudi's cooperation with reporters, something that had caused a flap between Trudi and Gertz.<sup>58</sup> It probably did not help when a *Sun-Times* reporter noted that during a phone interview "Leopold obviously was in the room and listening to his fiancée's end of the conversation, but he did not come to the phone. She muffled the phone a number of times before answering questions and then came back with answers that apparently had been approved by Leopold."<sup>59</sup>

The board found a clever way of diffusing the situation. On January nineteenth, it denied him parole discharge, but gave him permission to marry, even though he had not asked for it.<sup>60</sup> Since marriage had become, in the media, the primary motive for Leopold's bid for freedom, the papers treated the decision as a victory for Leopold. The *Daily News* ran a banner headline above its masthead, "State to Let Leopold Wed."<sup>61</sup> The *Tribune's* headline the next day was similarly upbeat, and the story made the denial of Leopold's bid for discharge sound secondary to his approved nuptials.<sup>62</sup> Something similar happened in the national press, where the *New York Times* headline read "Nathan Leopold Allowed to Wed," then mentioned the

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<sup>57</sup> Gladys Erickson, *Chicago American*, 15 Jan. 1961.

<sup>58</sup> Letters related to Gertz's reaction to the press coverage of Leopold's engagement can be found in LLC at NWU, box 29, folder 4.

<sup>59</sup> *Chicago Sun-Times*, 12 Jan. 1961,

<sup>60</sup> Edward Austin to NL, 23 Jan. 1961, NFL at CHM, box 18, folder 25.

<sup>61</sup> *Daily News*, 19 Jan. 1961.

<sup>62</sup> "Leopold Gets Parole Board Permit to Wed," *Chicago Daily Tribune*, 20 Jan. 1961.

parole petition refusal almost off-handedly in a subheadline.<sup>63</sup> The celebrity-wedding fanfare reached such a height that the *American* practically became a matchmaker. After Gertz said Leopold probably would not marry since the board had rejected his request for discharge, the paper ran a story titled “Pals Urge Leopold to Relent, Wed,” in which it used Leopold’s friends to show the case in favor of Leopold and Trudi marrying despite the board’s refusal to let him off parole.<sup>64</sup>

Leopold relented. He and Trudi were married on February 5, 1961, at a ceremony performed by Leopold’s former parole officer in Puerto Rico.<sup>65</sup> The story and an AP photo of the newlyweds made the front-page of at least a couple of Chicago papers, and the *New York Times* and the *LA Times* both ran notices.<sup>66</sup> By the time of the wedding, however, Trudi had learned to publicly eschew press attention the same way Leopold did, so there was little life left to the story.<sup>67</sup> The day after the ceremony, Leopold told Gertz that he wanted to leave \$5,000 in his will to Paul Henry, the former cellmate he had been so looking forward to reuniting with a year earlier.<sup>68</sup>

Leopold tried for discharge again in June 1961. This time, he asked governor Otto Kerner to commute his sentence, and petitioned the board to recommend the commutation to the governor. Kerner, who had come into office in January, amidst the disposition of Leopold’s first application for early discharge from parole, had

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<sup>63</sup> *NYT*, 20 Jan. 1961.

<sup>64</sup> *Chicago American*, 20 Jan. 1961.

<sup>65</sup> NL to EG, 6 Feb. 1961, LLC at NWU, box 29, folder 4. “Nathan Leopold is Married,” *NYT*, 8 Feb. 1961; Visitors Heard On Behalf of Nathan Leopold, 11 July 1961, p. 10.

<sup>66</sup> *Chicago Daily News* and *Chicago American*, 9 Feb. 1961; The *Chicago Daily Tribune* ran the story on the wedding on page 17; “Nathan Leopold is Married,” *NYT*, 8 Feb. 1961; “Leopold Marries San Juan Widow,” *LA Times*, 8 Feb. 1961.

<sup>67</sup> Letters in LLC at NWU, box 29 folder 4, show that Trudi’s earlier cooperation with the press had caused a flap between her and Gertz.

<sup>68</sup> NL to EG, 6 Feb. 1961, LLC at NWU, box 29, folder 4.

since replaced three of the board's five members, and referred Leopold to the restructured board, so Leopold and Gertz had reason to hope that their chances would be better the second time around.<sup>69</sup> But the battle was far from over, as Gertz began to discover at the parole board's hearing on Leopold's petition on July 11, 1961.

Gertz did not have much to tell the board that Leopold had not already conveyed in his first petition, although he did call Harold Row, the director of the Brethren Service Project, and Ralph Newman to testify in furtherance of Leopold's claims. As he had at the 1958 parole hearing, Gertz spent most of his time and attention showing public support for Leopold's release. The list of supporters included some very prominent citizens, as well as both the current and former Puerto Rican officials in charge of administering Leopold's parole.<sup>70</sup> In all, it was a fairly predictable retread of the approach Gertz had used at the 1958 hearing, although smaller in the scale of the efforts involved. That was the problem: Gertz and Leopold were making a remarkable claim for special treatment, but were not articulating a special case in favor in getting that treatment, and Leopold just could not build up the same momentum that had once gotten him free. The press did not even significantly cover this petition, having expended most of its energy on the subject earlier in the year, on Trudi and the first attempt at discharge.<sup>71</sup>

Gertz's only real argument at the July hearing, other than that parole was hampering Leopold's ability to do good, was that discharging Leopold would be a profound affirmation of the purposes of parole. Leopold himself had made a similar

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<sup>69</sup> EG to Otto Kerner, 12 May 1961, NFL at CHM, box 40, folder 5.

<sup>70</sup> Visitors Heard on Behalf of Prisoner, 11 July 1961, pp. 7-10. Some of these letters are collected in: LLC at NWU, box 29, folder 2.

<sup>71</sup> EG to NL, 19 Sep. 1961, LLC at NWU, box 30, folder 1.



statement in his letter of petition, but Gertz extended the line of thought to the point of making a major gaffe, thus triggering the only real moment of drama or tension at the hearing. Near the hearing's end, Gertz asserted that the board should have paroled Leopold years earlier than it did, and that letting Leopold off parole early would be a way of correcting that injudicious mistake. Most of the members who had heard Leopold's applications for release were gone by that point, but the members in 1961 did not appreciate the criticism. One of Gertz's own witnesses interjected to try to salvage the situation, saying the social utility of the services Leopold could provide and the opportunities he could take advantage of were the points the board should consider, not Leopold's merit and convenience. Still, it was a very sour note on which to close.<sup>72</sup>

In November 1961, Governor Kerner, following the board's recommendation, denied Leopold's application for clemency and discharge. Ralph Newman had resumed his role as a behind-the-scenes networker for Leopold, and got a private explanation from Kerner. The Governor said that the board had felt that it gone out on enough of a limb for Leopold in granting him parole in the first place, and that it did not owe him any additional favors. Kerner, for his part, felt he had to abide by the board's decision, or at least that was the explanation he gave to Newman.<sup>73</sup>

While Leopold's discharge petitions were working their way towards resolution in 1961, he was finding out for himself that his star power was not what it used to be. He had been counting on the idea that he could sell *Grab for a Halo* off of

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<sup>72</sup> Visitors Heard on Behalf of Prisoner, 11 July 1961, pp. 38-41. The transcript records that Ralph Newman had made that statement, but the content of the statement indicates that it might in actuality have been Harold Row.

<sup>73</sup> Ralph Newman to NL, 22 Nov. 1961, CHM box 16, folder 1.

the “scare value of [his] name,” without needing to rely on “any ability of mind in the literary field,” and he was wrong.<sup>74</sup> For the first time in his life, Leopold could not sell his story.

Leopold intended for his second book to be another memoir that picked up roughly where *Life Plus 99 Years* left off: at his final parole hearing.<sup>75</sup> Tim Seldes was skeptical, telling Leopold that “Your last [book] had intrinsic drama, as any prison story does,” but a sequel would need some source of drama other than a focus on Leopold’s life.<sup>76</sup> Seldes thought the book should focus on the Brethren Service Project, with the theme of rehabilitation. Leopold’s life would be included, but “subordinate to the Brethren work.”<sup>77</sup> Leopold, still convinced of his own ability to fascinate readers, responded to Seldes that “my experience so far has been that people are interested in my experiences as an individual, in what happens to me, and not in the Project. It’s a carry-over of the morbid curiosity people seem to have about me.”<sup>78</sup> The sample Leopold sent Seldes, however, only reinforced Seldes’s reservations: “I am sorry to be returning to you your material with a basically negative reaction...I agree with you that there is a continuing curiosity in your activities but in these pages at least, I think the reader would not...continue to be interested in the minutiae of your new life.”<sup>79</sup> Leopold tried to win Seldes over with new material, but to no avail.<sup>80</sup> Leopold tried to sell the book elsewhere after Doubleday passed, and after

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<sup>74</sup> NL to Arnold Maremont, 6 Mar. 1961, p. 2.

<sup>75</sup> NL to Tim Seldes, 13 June 1961, NFL at CHM, box 17, folder 17.

<sup>76</sup> Tim Seldes to NL, 21 Mar. 1961, NFL at CHM, box 17, folder 17, p. 1.

<sup>77</sup> Tim Seldes to NL, 30 June 1961, NFL at CHM box 17, folder 17.

<sup>78</sup> NL to Tim Seldes, 17 July 1961, NFL at CHM, box 17, folder 17.

<sup>79</sup> Tim Seldes to NL, 26 July 1961, NFL at CHM, box 17, folder 17, p. 1.

<sup>80</sup> Tim Seldes to NL, 4 Aug. 1961, NFL at CHM box 17, folder 17.

failing in that too he put the book on a shelf for a while, returning to the project periodically throughout the rest of his life.<sup>81</sup>

#### LEOPOLD'S RELATIONSHIP WITH THE MEDIA AFTER PAROLE TERMINATION, 1963-1971

With the board's refusal to terminate his parole early, Leopold had to lay low until his parole expired in March 1963, but once it did he was ready to hit the ground running.<sup>82</sup> He began his attempted comeback to public life by returning to the methods that had worked for him during the media campaign for his parole. In April 1963, one month after his parole expired and the board's publicity restriction did not apply anymore, he let the *San Juan Star* and *El Mundo* photograph him at his typewriter while he was supposedly working on his new book. He was hoping that the revelation that he was writing a sequel to *Life Plus 99 Years* would generate a flurry of interest from publishers the same way a *Life* magazine feature had done for the first book back in 1957.<sup>83</sup> Leopold also returned to his tactic of cooperating with a friendly journalist to create a flattering, in-depth profile, as he had done with Gladys Erickson, Marcia Winn, and John Bartlow Martin in the 1950s. Leonard Lyons's feature, "The Rehabilitation of Nathan Leopold," ran in the June 1963 issue of the *Saturday Evening Post*, the same magazine that had run Martin's three-part profile of Leopold in 1955. The Lyons feature was only one three-page installment, not nearly as long as the Martin feature, but it gave Leopold a chance to show himself off as a

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<sup>81</sup> For one of Leopold's efforts to sell the book soon after Seldes's rejection, see: NL to Gladys Erickson, 27 Aug. 1961, NFL at CHM box 6, folder 8; For an instance of Leopold trying to resurrect the project, see: NFL at CHM, box 14, folder 2.

<sup>82</sup> "Thrill Killer Leopold gets Liberty Today," *Chicago Tribune*, 26 Mar. 1963.

<sup>83</sup> NL to Ralph Newman, 5 Apr. 1963, NFL at CHM box 16, folder 2.

free man. It also gave him a chance to advertise in a major US magazine, via Lyons, that he was working a new book.<sup>84</sup>

The final article that ran in the *Post* was not what Leopold and Lyons had in mind. The *Post* cut out more than 3,000 words from Lyon's manuscript, including flattering material on Leopold's accomplishments and intelligence. It also inserted material that both Lyons and Leopold found objectionable, including a paragraph summarizing Leopold's crime,<sup>85</sup> Both Lyons and Leopold considered suing. Lyons gave up on the idea when his attorney told him it would be impossible to prove damage, but Leopold was more dogged.<sup>86</sup> Roy Cohn, the (in)famous attorney best-known for his work as Senator Joseph McCarthy's right-hand man during the Red Scare of the 1950s, pursued a settlement on Leopold's behalf, but eventually Leopold had to walk away empty-handed.<sup>87</sup>

For all Leopold and Lyons's objections, the piece's content was fairly innocuous. There were only a few elements that could have tarnished Leopold's image, none of them devastating.<sup>88</sup> But the *Post* editors' insistence on including a summary of the crime – though the summary contained no new information – dashed any hopes Leopold might have held that he could reemerge from the five years of relative media silence with a public image completely separate from the Franks murder. The cutting of the 3,000 words might have been an even harsher blow. That

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<sup>84</sup> Lyons, "Rehabilitation," 68.

<sup>85</sup> Leonard Lyons to Albert Blinder, 27 May 1963, NFL at CHM, box 14, folder 24.

<sup>86</sup> Leonard Lyons to NL, 2 June 1967, NFL at CHM, box 14, folder 24.

<sup>87</sup> NL to Leonard Lyons, 2 June 1967, NFL at CHM, box 14, folder 24. It is not clear why Leopold relied on Cohn in this matter instead of Elmer Gertz.

<sup>88</sup> Leopold's most controversial statements were probably his support for abortion on the grounds that he supported euthanasia, and hints that he had tried opium on the grounds that people should experience everything at least once, an ominous statement from an admitted thrill killer. Lyons, "Rehabilitation," 68.

length would have given the piece far greater prominence and impact in the magazine, and done much to popularize Leopold as someone who commanded press attention as a free citizen. The loss of that length, and the article's failure to attract a firestorm of renewed interest in Leopold, indicated the opposite: Leopold could not command the kind of attention or space as a free man that he could as a convict.

None of Leopold's passive-aggressive attempts to tantalize publishers in 1963 appears to have worked, but he never gave up the idea of doing another book, usually something autobiographical with a major publishing house. The most serious talks he had were with Tim Seldes's successor at Doubleday, Samuel Vaughan, but Vaughan turned out to be more intrigued by the prospect of a book in which Leopold would finally disclose things he could not or would not say while he was incarcerated than he was by a book on Leopold's social work and philanthropy. Vaughan claimed not to have any specific idea what revelations Leopold might make, but it did not matter. Leopold had no interest in writing another prison memoir, and he certainly was not going to talk about 1924. He probably did not help things by initially asking for a \$25,000 advance. The amount was \$9,000 more than his advance for *Life Plus 99 Years*, and at the upper-end of his own estimation of how much he got for the first book throughout its entire run, all for a sequel he had not yet written and whose samples had failed to impress Seldes years earlier.<sup>89</sup> He tried to entice Vaughan with the promise that "this time...I would, of course, be entirely free to take any part you

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<sup>89</sup> Samuel Vaughan to NL, 18 Jan. 1968, NFL at CHM box 19, folder 2.

Pp 1-2; for info on Leopold's payments for *Life Plus 99 Years*: Tim Seldes to Ralph Newman, NFL at CHM, box 43, folder 11, 8 May 1957; NL to Arnold Maremont, 6 Mar. 1961, NFL at CHM, box 15, folder 1.

might wish in promotion,” but it was not enough get the deal done.<sup>90</sup> The closest Leopold ever came to a follow-up to *Life Plus 99 Years* was a specialty book on birding, *Checklist of Birds of Puerto Rico and the Virgin Islands*, published by the University of Puerto Rico in 1963.<sup>91</sup>

Leopold could not or would not recognize that his celebrity had peaked, and would never return to the heights it had reached in 1924 and the 1950s. Part of his problem was that the parole board’s publicity clause, aimed at forcing Leopold out of the media spotlight, had worked. By the time Leopold was ready to begin reasserting himself as a public figure in 1960-1961, he had lost his momentum. By 1963, when he finally did get off parole, he had two more years of inertia to overcome.

He put many of his hopes for a comeback into a biographical film. He hustled for the deal constantly from 1961 until his death, but he only got to the point of selling options on the rights to three people. None of them were established producers, but all hoped they could put together a deal for the movie by either selling it to a major studio or finding independent financing. One was a real estate agent with supposed Hollywood connections whom Leopold met through a former roommate at the Brethren Service.<sup>92</sup> Another was an actor and former Brethren volunteer with ambitions to branch out behind the camera. The third was, in Leopold’s words, a “complete unknown.”<sup>93</sup> Leopold put the greatest level of energy and emotional investment into his collaboration with the actor, Don Murray, in the mid 1960s.

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<sup>90</sup> NL to Samuel Vaughan, 25 Jan. 1968, NFL at CHM, box 19, folder 2.

<sup>91</sup> Nathan Leopold, *Checklist of Birds of Puerto Rico and the Virgin Islands*, (Rio Piedras: U Puerto Rico P, 1963).

<sup>92</sup> NL to Tim Seldes, 19 June 1961, NFL at CHM, box 17, folder 17.

<sup>93</sup> NL to William Evans, 16 Sep. 1967, box 6, folder 10, NFL at CHM; NL to Arnold Maremont, 3 Apr. 1968, NFL at CHM, box 15, folder 1.

Murray was a former Brethren Service volunteer whom Harold Row, the director of the Service Project, had vouched for to Leopold.<sup>94</sup> Murray envisioned a film that would adapt *Life Plus 99 Years* as well as portray the five years since Leopold had left prison, making the project a combination of Leopold's most popular media enterprise with the autobiographical sequel for which he had been unable to find a publisher.<sup>95</sup> Leopold told a friend that, with Murray, "I might someday succeed in making my name something to be proud of rather than a symbol of the ultimate in evil."<sup>96</sup> Just in case, however, Leopold had veto power over Murray's script.<sup>97</sup>

Leopold's discussions of the films' content indicate a new openness about being willing to play with the facts of his life in order to make for a better story, provided it was not a story that embarrassed him.<sup>98</sup> The only real strings he attached to his own adaptations was that there be no reenactment of his crime or trial, that his family be portrayed well, and that he not look bad.<sup>99</sup> Leopold did not, however, show concern with protecting people he did not care about. He was, in fact, quite ready to smear them to advance his own interests. In the course of his research, Don Murray discovered that Elmer Gertz and Leopold's brother, Sam Lebold, had offered to pay Harold Row to offer Leopold his job with the Brethren (it is not clear, but Row seems to have declined the money, and offered Leopold the job anyway). Murray wanted to depict the episode in the movie. Leopold responded as follows:

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<sup>94</sup> NL to Abel and Katharyn Brown, 31 Mar. 1964, NFL at CHM, box 3, folder 11; NL to RN, 11 Feb. 1964, NFL at CHM, box 16, folder 2.

<sup>95</sup> "Murray to Make Film on Leopold," *NYT*, 12 Feb. 1964, p. 30.

<sup>96</sup> NL to Abel and Katharyn Brown, 31 Mar. 1964, NFL at CHM, box 3, folder 11, p. 3.

<sup>97</sup> NL to RN, 11 May 1964, NFL at CHM, box 15, folder 24.

<sup>98</sup> NL to EG, 3 Aug. 1964, LLC at NWU, box 35, folder 1; NL to Don Murray, 2 Apr. 1964, NFL at CHM, box 15, folder 18.

<sup>99</sup> NL to EG and Ralph Newman, 9 Mar. 1961, LLC at NWU, box 42, folder. In at least one project, Leopold also held script approval: NL to Ralph Newman, 11 May 1964, NFL at CHM, box 15, folder 24.1.

Harold agrees with me that the present form in which the incident appears is objectionable -- it puts me in a lousy light. And fo [sic] course you can't use my brother. Perhaps you could use 'an attorney,' but such a person must in no way resemble Elmer Gertz. Perhaps we can put the rap on poor Varian Adams, who was my attorney before Elmer entered the picture and who is safely dead...this incident must be worked over so as not to put me into so bad a light.<sup>100</sup>

Leopold was very concerned with protecting himself, Gertz, and Sam, but completely at ease in portraying Adams as central to an unflattering incident in which Adams was completely uninvolved, confident in the knowledge that a dead man could not rebut allegations.

Leopold's crime, for which he had so often professed unrelenting remorse, was not much more sacred to him than Adams's reputation. In late 1969, Leopold was trying to secure a documentary deal with NBC and learned from a representative that the network was wondering if the case could be revised so that it somehow related to the student protest movements that permeated many 1960s college campuses. Leopold enthusiastically endorsed the idea: "Perhaps my case could be viewed as a very early case of rebellion against adult authority such as seems to be the basis in campus unrest."<sup>101</sup> Although nothing came of the suggestion, Leopold was untroubled by the idea of connecting the case to radicalism in the 1960s the same way he had once connected it to juvenile delinquency, even though the delinquency connection had been so central to the normality narrative. Evidently, he viewed the Franks murder as just another mutable element of his persona, something to be adapted as necessary for public consumption. Nor was Leopold's hypocrisy confined to the movie. Once, while the *Compulsion* lawsuit was working its way through the courts,

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<sup>100</sup> NL to Don Murray, 19 May 1964, NFL at CHM, box 15, folder 18, p. 1.

<sup>101</sup> NL to Robert Allen, 24 Aug. 1969, NFL at CHM, box 2, folder 17.



he pitched a novel in which he would loosely fictionalize the case of Richard Speck, a serial killer who murdered eight nurses in New York.<sup>102</sup> He saw no apparent contradiction in fictionalizing another convicted murderer's life even as he sued over the violation he felt at someone else's having fictionalized his own. None of the film projects came to fruition, but, as with *Grab for a Halo*, Leopold kept the idea of a movie in the back of his mind and was always looking for a chance to realize it.

Part of Leopold's problem was that he was struggling to reclaim a position as a *reluctant* public figure, meaning that he had to self-promote without *appearing* to self-promote. He was not worried about antagonizing the parole board anymore. But, as Leopold-Loeb historian Hal Higdon puts it, "A garrulous Nathan Leopold openly courting the limelight would have been intolerable, particularly to his own generation. A Nathan Leopold fleeing the spotlight somehow seemed tolerable, human, almost likeable," while also adding to his mystique.<sup>103</sup> But Leopold had also boxed himself in during the media campaign for parole. He had crafted a public image around humility and the desire to live a quiet life in service to others. At the time, the press considered him newsworthy enough that he could count on reporters to cover him without his needing to seek them out. In the 1960s, however, if he wanted to renew the press and the public's interest in him, he would need to figure out a way to boost his profile while being consistent with his self-fashioned image of humility and his professions not to want attention.

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<sup>102</sup> NL to Samuel Vaughan, 25 Aug. 1966, NFL at CHM, box 19, folder 2.

<sup>103</sup> Higdon, *Crime of the Century*, 324.

LEOPOLD'S CAREER AS AN EXPERT ON CRIME AND REHABILITATION,  
1964-1971

Within those confines, Leopold's greatest success came as a spokesperson on prisons and crime, something that in 1958 he had expressly told the parole board he had no interest in becoming.<sup>104</sup> Since that statement, he had found out the hard way, through the film and movie projects, that he would not be famous and applauded simply for being a model citizen living in Puerto Rico. But at the same time, he was also discovering that he could find a niche as a very distinct type of criminological pundit: an expert on penology and rehabilitation who spoke from experience. He did not get the money or the degree of celebrity out of his advocacy that he wanted – hence his continued pursuit of the book and movie projects – but he did find in it the attention he craved. When he published, spoke, or granted interviews as a respectable citizen who had acquired a unique perspective on penology and rehabilitation, he got recognition for his modern, rehabilitated persona rather than for his older, criminal one. And his readiness to speak and embrace attention could be seen as socially conscientious advocacy, not self-promotion.

He had begun to consider the potential that working in reform could do for him in 1962. Ferris Laune, a criminologist with whom he had worked in the 1930s, was working on a book about prisons, and invited Leopold to be his coauthor. Leopold, thinking he could prepare the book while on parole and then have it released soon after his parole ended, had responded positively: "I think my best chance, for my remaining years, is to try to put over the idea that I am a man who, in his youth, made a terrible mistake, but who, since, has tried, so far as is possible, to make up for

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<sup>104</sup> Parole Board Stenographic Report, 5 Feb. 1958, p. 8.

it...Coauthoring a book on prison could, I think, only help my reputation.”<sup>105</sup> The collaboration never came to pass, but evidently Leopold kept thinking along those lines.

Leopold’s first successful foray into the national scene as an expert on penal reform came in 1964, when he wrote an article called “Imprisonment Has no Future in a Free Society” for the criminological journal *Key Issues*, edited by Hans Mattick, one of the criminologists who had supported Leopold’s release during the parole campaign.<sup>106</sup> In the article, he called for an end to the prison system as people knew it, asserting that the real motivation behind the current system was vengeance, with society using the state as a proxy through which it could distance itself from the act. He argued that deterrence, incapacitation, and other arguments that prison protected society were rationalizations to justify the more primitive instinct for revenge. To progress towards a more effective model, he advocated a flexible, therapeutic approach towards corrections, with a greater emphasis on keeping offenders in touch with their families and society, instead of isolated from them.<sup>107</sup>

None of Leopold’s assertions were intellectually groundbreaking; criminologists had been making similar points for years. What made “Imprisonment” noteworthy is that it was Nathan Leopold who was making those assertions. During his publicity campaign for parole, it had behooved Leopold not to antagonize corrections officials in telling the story of his rehabilitation. Freed from those constraints, he suddenly began condemning the operation of contemporary prisons,

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<sup>105</sup> NL to Ferris Laune, 4 May 1962, NFL at CHM, box 14, folder 2, p. 2. The rest of Leopold and Laune’s communications about the matter are in this same folder. The letter in which Leopold mentions his timeline for the book in relation to his parole is: NL to Ferris Laune, 29 May 1962.

<sup>106</sup> Visitors Heard on Behalf of Nathan Leopold, 9 July 1957, LLC at NWU, box 3, folder 7, p. 10.

<sup>107</sup> Nathan Leopold, “Imprisonment has No Future in a Free Society,” *Key Issues* 2 (1965): pp. 24-32.

writing that “there are a very few individuals...who are rehabilitated *in* prison; never...are they rehabilitated *by* prison. On the contrary, they are rehabilitated *in spite of* prison” (italics in original).<sup>108</sup> And, where criminologists could use statistical research and theoretical models to back up their assertions, Leopold could offer a convict’s view, combined with the analytical insights of a highly educated intellectual. Karl Menninger even asked Leopold for permission to reprint “Imprisonment” for the staff and residents at his psychiatric clinic.<sup>109</sup>

“Imprisonment has No Future in a Free Society” wound up having a very wide distribution, and its success gave Leopold an opening, bringing him the closest he ever came to the renewal in attention he had been courting since 1961. Before the essay ran in *Key Issues*, Leopold granted a small English language magazine in Puerto Rico permission to publish it in November, 1964. The Associated Press and *Parade* magazine both picked up the story from there, and “Imprisonment” became a national item before the journal that had originally commissioned the article got to run it.<sup>110</sup> Some newspapers covered the article’s publication as news, while the *Daily News* published a rebuttal of Leopold’s ideas.<sup>111</sup> The exposure garnered further offers. Carey McWilliams tried to solicit further writing from Leopold for *The Nation*.<sup>112</sup> That project fell through, but Leopold contributed an expanded version of “Imprisonment” to a symposium on prisons and correctional law that ran in the

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<sup>108</sup> Leopold, “Imprisonment,” 29.

<sup>109</sup> NL to AG and Doris Ballenger, 27 Feb. 1965, NFL at CHM, box 2, folder 26.

<sup>110</sup> NL to EG and Harold Row, 22 March 1965, LLC at NWU, box 35, folder 2.

<sup>111</sup> “Leopold, Freed Lifer, Says Prisons Fail,” *The Washington Post*, 3 Dec. 1964. “Imprisonment Not Useful to Society, Says Leopold,” *Chicago American*, 17 Nov. 1964; John Johnston, “Deterrent Power of Imprisonment,” *Daily News*, 28 Dec. 1964.

<sup>112</sup> Cary McWilliams to NL, 23 Nov. 1964, NFL at CHM, box 15, folder 19.

*Nebraska Law Review*. His views immediately succeeded Karl Menninger's.<sup>113</sup>

Leopold's biggest elaboration on the success of "Imprisonment," however, was a 10,000 word exclusive interview he gave to the *Chicago Daily News*, for which he was paid \$500.<sup>114</sup>

Leopold had been thinking about pursuing a side career as a public speaker, and the *Daily News* feature, which ran over the course of three days in March 1965, gave him an important opportunity to begin setting up a reputation as one.<sup>115</sup> The first installment let Leopold promote his current activities as a part of his post-parole image. The interviewer, MW Newman, introduced the interview series by describing crime in the US as an increasingly severe problem, then profiled Leopold as someone who could offer a unique perspective in the search for solutions. The article discussed Trudi, Leopold's medical science research, and briefly, perhaps to help Leopold find financing, the Don Murray biopic about Leopold. The story's discussion of Leopold's crime was almost non-existent.<sup>116</sup> In the second two installments, in which Leopold offered his critiques of the prison system, he essentially repeated his points from the *Key Issues* piece, but in the second installment, he explicitly invoked his own experience as a part of his critiques. In "Imprisonment Has no Future in a Free Society," Leopold had focused on general principles about the function of prisons in society. He was more personal in his talk with the *Daily News*. He made it clear several times that his own maturation, and the rehabilitation that came with it, had

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<sup>113</sup> Nathan Leopold, "What is Wrong with the Prison System?" *Nebraska Law Review* 45, no. 1 (Jan. 1966): 33-57.

<sup>114</sup> NL to AG Ballenger, 6 May 1965, NFL at CHM, box 2, folder 26.

<sup>115</sup> NL to EG, 5 Oct. 1964, LLC at NWU, box 35, folder 1; MW Newman, *Daily News*, part I, "Leopold: A New Man, A New Life," 12 Mar. 1965, part II, "Leopold's Views on Crime and Punishment," 13 Mar. 1965, part III, "Leopold's Bid for Prison Reform," 15 Mar. 1965.

<sup>116</sup> MW Newman, part I, p. 42.

nothing to do with his incarceration. At one point, Newman took care to mention Leopold's belief that he would never have killed again after the Franks murder even if he had not been caught.

In the *Daily News* features, then, Leopold was trying to segregate his ideas for how to structure institutions that would foster rehabilitation from his own personal experience at Joliet. He was possibly hoping that, if he continued in his calls for reform, his criminal past could linger as a source of credibility for his assertions, but not be so closely connected to his suggested reforms that he would need to discuss it explicitly or in-depth.<sup>117</sup> The *News*, however, seems to have thought that people were primarily interested in hearing from him precisely because of his own experiences; the third installment, in which Leopold spelled out his proscriptions for reform – smaller prisons, classifying offenders by type of offense, and other fairly standard progressive initiative – was the shortest of the three installments and the only one that was not a front-page story.<sup>118</sup>

Leopold never found big money as a pundit on criminal justice reform, nor reclaimed the kind of media status he had held as a defendant in 1924 or a prisoner in the 1950s, but he accepted sporadic invitations to give speeches on prisons and related matters for the rest of his life. He gained access to some prestigious venues. He gave television interviews on capital punishment to ABC and the Canadian Broadcasting Corporation, the latter at a time when the Canadian parliament was considering national death penalty legislation, giving added import to the subject.<sup>119</sup>

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<sup>117</sup> MW Newman, part II, p. 1.

<sup>118</sup> MW Newman, part III, p. 20.

<sup>119</sup> NL to AG Ballenger and Mrs. AG Ballenger, 21 Sep. 1969, NFL at CHM, box 3, folder 1; NFL at CHM, box 3, folder 16.

He also spoke at a conference held by the Philadelphia Bar Association and helped Karl Menninger edit portions of Menninger's book, *The Crime of Punishment* (1968), for publication. The Menninger book, especially, showed how far Leopold had gone from being a notorious murderer to a case study on criminal justice policy. It opened with a discussion of the 1924 crime as an important moment in drawing attention to the relationship between society and the criminal justice system, quoted an interview Menninger conducted with Leopold on the reforms then underway at Joliet, and cited Leopold's life after parole as evidence of the virtues of the parole system.<sup>120</sup>

#### SHIFTING THOUGHT ABOUT CRIME AND THE DECLINING INTEREST IN LEOPOLD, 1965-1971

Unfortunately for Leopold, he was positioning himself as an expert on prison reform just as the American public was losing most of whatever interest it had ever had in his kind of progressivism. The mid-1960s saw the beginning of a national shift towards what historian David Rothman terms the "post-Progressive" or "anti-Progressive" phase of American criminal justice. Both the public and the criminal justice institutions began to reject the principle that criminality was an affliction which needed to be treated or cured on an individual level. As such, there was much less demand for people who offered suggestions on how to make prisons more effective as therapeutic institutions.<sup>121</sup>

Several things triggered the backlash against progressive approaches to crime in general and prison specifically. Rothman argues that for approximately sixty-five

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<sup>120</sup> A transcript of his speech, from 11 Sep. 1970, can be found in: LLC at NWU, box 36, folder 4. Karl Menninger to NL, 30 Jan. 1968 and 28 June 1968, NFL at CHM, box 15, folder 12; Karl Menninger, *The Crime of Punishment*, (New York: Viking P., 1968), v, 248, 251-252.

<sup>121</sup> Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America*, rev. ed., (New York: Aldine de Gruyter, 1980, 2002), 12.

years underfunding, understaffing, inadequate personnel training, and overcrowding had negated any potential effectiveness of state sponsored progressive programs, and that by 1965 the gap between intention and reality was too great to ignore.<sup>122</sup> The national murder and robbery rates skyrocketed between the early 1960s and 1975, numerous statistical and theoretical studies in the 1970s challenged the efficacy of every element of the American criminal justice system – including the prison and parole systems – and a wave of prison riots, culminating in the 1971 Attica riot, showcased the dysfunctionality of the prison system.<sup>123</sup> According to criminal justice scholar Samuel Walker, “never before had there been such a pervasive sense that something was fundamentally wrong in the criminal justice system.” In short, crime, and the state’s response to it, seemed to have become a national crisis.<sup>124</sup>

As crime itself became a prominent national political issue for the first time – rather than specific types of crime or perceived problems in the criminal justice system – it quickly became a focal point for the political and social tensions of the 1960s. As both liberals and conservatives challenged the individual treatment philosophy, but in different ways and for different reasons, Leopold found himself alienated from both groups.<sup>125</sup>

Liberals viewed criminal justice as correlative to social justice, lobbying for reform through increased social and economic equality and the protection of individual rights. The civil rights movements raised the national consciousness about

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<sup>122</sup> Rothman, *passim*.

<sup>123</sup> Rothman, 425; Samuel Walker, *Popular Justice: A History of American Criminal Justice*, 2<sup>nd</sup> ed., (New York: Oxford, 1998), 201, 208-210. Walker argues that at least half the increase in the crime rate was demographic, attributable to the baby boomers coming of age. But the increased rate still triggered widespread anxieties that crime in America had become a crisis.

<sup>124</sup> Walker, 180-210.

<sup>125</sup> Walker, 180.



institutionalized inequality, heightened concern with the connections among race, crime, and poverty, and invited challenges to the *status quo*.<sup>126</sup> Lyndon Johnson's administration implemented policies that approached crime as a product of social and economic influences – particularly upon minorities and the poor – and embraced the ideal of rehabilitation over punishment as the best way to deal with criminals.<sup>127</sup> (The 1960s, in fact, turned out to be the peak of correctional treatment, with a dramatic increase in the number of parolees.<sup>128</sup>) The Supreme Court embraced a new “rights consciousness” in a series of decisions that restrained the actions of law enforcement officials and protected the civil rights of suspects, defendants, and convicted prisoners.<sup>129</sup> Prisoners embraced “rights consciousness” by agitating for recognition of their rights as inmates, while officials at many prisons, including Stateville, saw a decline in their institutional autonomy and authoritarianism.<sup>130</sup> The liberal critiques of the prison system were, in sum, about correcting and preventing institutional abuse – whether the institution was social, economic, or legal – not about designing responses to crime tailored to the individual criminal.

Leopold never found a home among the liberal critics of the justice system. He and his persona were simply too rooted in the standards of mainstream 1950s America for him to suddenly begin challenging its institutions or values with any credibility in the 60s. The best-known prison memoirs from the era of criminal justice that began in the 1960s, such as Eldridge Cleaver's *Soul on Ice* (1968), George

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<sup>126</sup> Walker, 193-195.

<sup>127</sup> Walker, 202-205; Blake McKelvey, *American Prisons: A History of Good Intentions*, (Montclair, N.J.: Patterson Smith, 1977), 335.

<sup>128</sup> Like the crime rate, the statistical increase in parolees can be partially explained by the baby boomers coming of age; Walker, 205.

<sup>129</sup> Walker, 181-189.

<sup>130</sup> James Jacobs, *Stateville: The Penitentiary in Mass Society*, (Chicago: U of Chicago P, 1977), 52-70; Walker, 184-189.

Jackson's *Soledad Brother* (1970), or later Jack Henry Abbot's *In the Belly of the Beast* (1981), were not stories of rehabilitation through discovered morality and the embrace of social norms and mores like *Life Plus 99 Years*. They were sociological indictments of a morally corrupt and morally corruptive country that created criminals through institutionalized racism and brutality. Leopold, by contrast, had spent years using the normality narrative to plead his *compatibility* with white middle class values. Even his criticisms of the prison system in the 1960s were for the system's inefficacy in helping inmates attain that compatibility.<sup>131</sup>

Even worse for Leopold than his alienation from liberalism, the New Right was ascending in the mid-1960s, with a retributive model for criminal justice underpinning its success. According to historian Lisa McGirr, the New Right grew out of an entire worldview that rejected the federal government's expanded role in American domestic life since World War II, but it was the movement's emphasis on "law and order" that allowed it to move from the political fringe to the national mainstream. The perceived crisis in the criminal justice system made crime an effective vehicle for the New Right to capitalize on the general discontent with liberalism and emphasize personal responsibility over environmentalism. In fact it was so effective, according to McGirr, that "by the end of the 1960s, conservatives' concerns with 'law and order' as well as morality, and their critiques of 'liberal'

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<sup>131</sup> Eldridge Cleaver, *Soul on Ice*, (New York: Dell, 1968); George Jackson, *Soledad Brothers: The Prison Letters of George Jackson*, (New York: Coward-McCann, 1970); Jack Henry Abbot, *In The Belly of the Beast: Letters from Prison*, (New York: Random House, 1981).

elites' and 'coddling criminals'...had become a part of the dominant political discourse."<sup>132</sup>

New Right conservatism, and the "tough on crime" platform that was a part of it, grew continuously stronger in American national politics, culminating with Ronald Reagan's presidency from 1981-1989, and created policies and approaches that continue today. At first, liberal and conservative reformers allied in dismantling the criminal justice system as Leopold knew it and repudiating the principles of the criminal justice system as Leopold envisioned it. In the 1970s, liberal reformers challenged indeterminate sentences on the grounds that they gave too much discretion to autonomous bodies like parole boards, and advocated for determinate sentences and mandatory sentencing guidelines in the hope that standardizing sentences would limit racial disparities in time served. Conservatives supported the same changes on the grounds that criminals were getting back on the streets too soon, and that fixed and mandatory sentences would be stiffer than indeterminate, discretionary ones, and would therefore offer greater societal protection from dangerous offenders. The coalition collapsed, however, as the conservative approach became dominant. In the federal and most smaller jurisdictions, the changes in sentencing did little to correct racial discrepancies while making most sentences longer. Amid the frenzy of the war on drugs and the increasing animosity towards criminals as societal enemies, the American system – following precisely the retributive model Leopold decried – developed the fastest growing inmate population in the world.<sup>133</sup>

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<sup>132</sup> Lisa McGirr, *Suburban Warriors: The Origins of the New American Right*, (Princeton: Princeton UP 2001), 186. For a fuller explication of the New Right's worldview, see 147-186.

<sup>133</sup> Rothman, 425-437; Walker, 216-225, 227-230.

In short, by the time Leopold died in 1971, the country was already leaving him behind. The cultural, political, and social climates were all giving way to a new generation, one that had little interest in what he had to say about prison reform or, for that matter, in his once-popular narrative of personal rehabilitation.

THE DEATH OF NATHAN LEOPOLD AND THE SHIFT IN ELMER GERTZ'S  
RELATIONSHIP WITH PUBLICITY IN THE LEOPOLD-LOEB CASE

Leopold died of heart failure at age 66 after a few months of prolonged illness, having consistently outlived his doctors' predictions since 1924. Not long before he fell sick, he had been thinking of returning to work on *Grab for a Halo*, or dedicating himself exclusively to the production of a film about his life.<sup>134</sup> His plans derailed when his health began a precipitous decline in April. But in what, according to Trudi, he knew to be his last months, he worked assiduously to promote a documentary that was in production.<sup>135</sup> Even with all of the false starts and blunt failures he had encountered over the years, he never gave up on the idea of selling his preferred version of his life story, with the emphasis on the parts he chose and the control of the narrative under his sovereign authority. He was hospitalized for the last time on August 19, and died on August 29, 1971.<sup>136</sup> He donated his body to science, and his eyes to a transplant program.<sup>137</sup> His brother Sam had told him he would not be allowed a place at the family plot in Chicago.<sup>138</sup>

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<sup>134</sup> NL to EG, 29 Mar. 1971, LLC at NWU, box 36, folder 4.

<sup>135</sup> Trudi Leopold to "Family and Friends," 10 Sep. 1971, LLC at NWU box 36, folder 4; Margaret Hyman "Nathan Leopold: 'On the Whole, I have had a good life,'" *Chicago Sun-Times*, 11 July 1971.

<sup>136</sup> Leslen Oeslner, "Nathan F. Leopold of 1924 Murder Case is Dead," *NYT*, 31 Aug. 1971; Other reports, such as Hal Hidgon's, indicates that Leopold died on August 30. The most likely explanation for the disparity is that Leopold died late at night on the 29<sup>th</sup>, or early in the morning of the 30<sup>th</sup>. Hidgon, *Crime of the Century*, 340.

<sup>137</sup> Hidgon, *Crime of the Century*, 340.

<sup>138</sup> NL to Mr. and Mrs. AG Ballenger, 7 Oct. 1970, box 3, folder 1.

Leopold's death brought a momentary resurgence in press attention, and revealed both the successes and the failures of his efforts to reshape his public image. He made page one in Chicago and Los Angeles, and got a large obituary in the *New York Times* and the *Washington Post*.<sup>139</sup> The stories included discussions of Leopold's time as a model inmate and his accomplishments after parole; the *Post* even used Leopold's life after 1924 as an argument against the death penalty, and MW Newman, the reporter who interviewed Leopold for the *Daily News* in 1965, ran a piece entitled "Reformation of a Killer."<sup>140</sup> But the papers also, in biographizing Leopold, treated his life and death as noteworthy because of his involvement in a historic event: Robert Franks's murder. They gave lengthy discussions of his crime and the sentencing hearing, and all included photos from 1924.<sup>141</sup> In 1964, Leopold had told a relative that he thought he was succeeding in changing the nature of his public image, because in the past 3-4 years "what [publicity] there has been has often NOT stressed 1924 as the principal thing in my life."<sup>142</sup> The coverage of Leopold's death indicates that once he was no longer around to draw focus towards other things, the emphasis quickly began to revert to 1924. The situation might not have been

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<sup>139</sup> Richard Cohen, "Nathan Leopold: Life of Atonement" *Washington Post*, 31 Aug. 1971. "Nathan Leopold Dies at Age 66," *Chicago Tribune*, 30 Aug. 1971; Phil Blake, "Last Chapter in Infamous slaying: the Death -- and Life -- of Nathan Leopold," *Daily News*, 30 Aug. 1971. Leslen Oeslner, "Nathan F. Leopold of 1924 Murder Case is Dead," *NYT*, 31 Aug. 1971. "Nathan Leopold, 66, Thrill Killer, Dies," *Los Angeles Times*, 31 Aug. 1971; Ray Brennan, "Leopold Eulogized as a 'Gentle Person,' *Chicago Sun-Times*, 31 Aug. 1971.

<sup>140</sup> "Nathan Leopold," *Washington Post*, 31 Aug. 1971. MW Newman, "Reformation of a Killer," *Daily News*, 30 Aug. 1971.

<sup>141</sup> The *Chicago Sun-Times* did not run a photo of Leopold from 1924 in its front-page feature on his death on 30 Aug., but ran a photographic feature on Leopold on Aug. 31.

<sup>142</sup> NL to Abel and Katharyn Brown, 30 Nov. 1964, NFL at CHM, box 3, folder 11, p. 2.

entirely bad for Leopold though. According to Elmer Gertz, “Leopold would have been pleased that, in his death, he was still news.”<sup>143</sup>

Gertz did what he could to play into the event’s newsworthiness. Less than a week after Leopold’s death, Gertz wrote to his publisher suggesting that it might be a good time publish a paperback edition of *A Handful of Clients* so that they could take advantage of the publicity Leopold’s death aroused.<sup>144</sup> Soon after that, Gertz was wondering if one of the large circulation magazines might be interested in commissioning him to do an article on Leopold.<sup>145</sup> Gertz’s agent tactfully but clearly responded that “we have probably had it with this issue and maybe it would be best to move onto something fresh.”<sup>146</sup> It appears that Gertz encountered the same problems in marketing Leopold’s story that Leopold did: editors thought Leopold’s topicality had passed. Gertz settled for writing letters the editor to Chicago papers thanking them for their “fair and sympathetic coverage of [Leopold’s] death,” and using Leopold’s case to argue against the death penalty.<sup>147</sup>

Leopold’s demise was the beginning of the third and final phase of Gertz’s relationship with the publicity of the Leopold-Loeb case, when Gertz shifted to trying to control the case’s narrative as a historic event rather than an ongoing one. The first phase was the parole campaign, when Gertz found in championing Leopold’s release something perfectly suited to his personal, professional, and ethical goals. Gertz was a passionate civic reformer years before he met Leopold – he had, for example, a long

<sup>143</sup> EG, *To Life: The Story of a Chicago Lawyer*, (Carbondale: Southern Illinois UP, 1974, 1990), 198.

<sup>144</sup> EG to Dwight Follett, 2 Sept. 1971, LLC at NWU, box 41, folder 3.

<sup>145</sup> EG to Max Siegel, 7 Sep. 1971, LLC at NWU, box 41, folder 3.

<sup>146</sup> Max Siegel to EG, 8 Sep., 1971, LLC at NWU, box 41, folder 3, p 1.

<sup>147</sup> Elmer Gertz, letter to the editor, *Chicago Sun-Times*, 11 Sep. 1971; “What Leopold’s Life Teaches us,” *Chicago Daily News*, 8 Sep. 1971; “Leopold Rehabilitation Plan Spurs ban of Death Penalty–Gertz,” *Lerner Newspapers*, 1 Sep. 1971. LLC at NWU, box 17, folder 2, contains carbon copies of several other letters from Gertz to various publications.

record of pursuing fair housing opportunities in Chicago and the admission of black attorneys to the Illinois bar<sup>148</sup> – but being Nathan Leopold’s attorney had made Gertz famous, and Gertz enjoyed it. As he characterized his experience during the parole campaign:

Suddenly, lawyers and judges whom I had known for years were remarkably deferential in manner; suddenly, old clients acted as if they were honored to have me handle their affairs; suddenly, members of my own family displayed admiration and affection beyond the accustomed measure—I guess that is all a part of the fame I experienced daily. I confess I absorbed it like a sponge, greedily, gratefully.<sup>149</sup>

It was not just the attention, it was the nature of the attention. The successful conversion of Leopold’s release into a referendum on parole during the media campaign meant that Gertz could reap the publicity he loved by positioning himself not just as a well-respected lawyer, but as the champion of a just cause. The downside of victory in the parole campaign, for Gertz, was that it brought an end to the project that had garnered him such recognition. He did what he could to keep his image up. In the year after Leopold’s parole, Gertz wrote letters to the editor and gave lectures on human rights issues, especially the death penalty, using his work for Leopold to evidence his professional achievements and personal experience.<sup>150</sup> But he knew that this fame as the man who got Nathan Leopold out of prison could not last forever.

Both of the remaining two phases of Gertz’s relationship with the case were, in a sense, efforts to reclaim and cement the status he had enjoyed so much. In the second phase, which ran from 1958 to 1971, Gertz sought to expand his public

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<sup>148</sup> Erick Pace, “Elmer Gertz, a Top Lawyer, is Dead at 93, Won for Leopold, Ruby, and Henry Miller,” *NYT*, 29 Apr. 2000.

<sup>149</sup> Elmer Gertz, *A Handful of Clients*, (Chicago: Follett P, 1965), 111-112.

<sup>150</sup> EG, letter to the editor, *Chicago Sun-Times*, 20 Dec. 1958; EG, letter to the editor, *Chicago Daily News*, 22 Dec. 1958; Promotional literature for some of Gertz’s speeches can be found in LLC at NWU, box 27, folder 5.

presence beyond his work on the parole campaign, including by pursuing new avenues of work for Leopold. The *Compulsion* lawsuit let Gertz build upon his connection to Leopold after Leopold's parole, but in pursuit of a different kind of high-profile legal victory. Gertz also reveled in his role as liaison between Leopold and the board, taking a special pride in the idea that he had the board's special trust and respect. Even when things did not turn out as Gertz hoped, as with the board's insistence on the dissolution of the Leopold foundation in June 1958, Gertz's confidence in the board's good will remained unfazed.<sup>151</sup>

Gertz's self-confidence sometimes caused problems. In late 1959, Edward Austin, the superintendent of parolees in Illinois, asked Sam Lebold for a discrete meeting so that the two men could discuss something Austin did not want to put in writing.<sup>152</sup> Leopold later told Gertz that Austin had conveyed the message that the members of the parole board found Gertz annoying. At least in the version of the story that Leopold passed on to Gertz, the parole board's problem was not personal. They wanted Leopold to file his own petitions, moving through the customary channels, and the members did not think any attorney should be appearing before them and writing to them on Leopold's behalf.<sup>153</sup> Sam was hardly an unbiased source when it came to Gertz; they loathed one-another, and each had been actively trying to marginalize the other from Leopold's affairs for years.<sup>154</sup> But in this instance Leopold believed his brother, and asked Gertz not to appear at an upcoming parole board

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<sup>151</sup> EG to NL, 13 June 1958, LLC at NWU, box 27, folder 3.

<sup>152</sup> NL to EG, 21 Nov. 1959, LLC at NWU, box 28, folder 2.

<sup>153</sup> NL to EG, postmarked 5 Dec. 1959, LLC at NWU, box 28, folder 2.

<sup>154</sup> Examples: NL to EG, 19 Feb. 1959, LLC at NWU, box 28, folder 1, p.4; EG to NL, 22 Jan. 1959, LLC at NWU box 27, folder 5. EG to NL, 21 Nov. 1958, LLC at NWU, box 27, folder 5.



meeting.<sup>155</sup> Gertz, however, did attend at least one more parole board hearing, the one over Leopold's application for a gubernatorial sentence reduction that would get him off of parole early.<sup>156</sup> And Gertz never lost faith in himself; after Leopold died, Gertz bragged to the press that Leopold had been paroled "frankly, because the parole board had faith in me."<sup>157</sup>

Leopold and his friends sometimes worried that Gertz's penchant for press coverage clouded his judgment. In 1959, Leopold wrote a letter practically imploring Gertz to cease talking to the press. He credited Gertz with honorable motives, but complained that, because of the press's appetite for conflict and sensationalism, "no matter how good what you say is, you just add fuel to the flame, help start a controversy."<sup>158</sup> After the publication of Gertz's memoirs, Ralph Newman was outraged that he had been included in the book without permission, and that Gertz had included information that was supposed to remain confidential. AG Ballenger, Leopold's cousin, even attributed some of Leopold's own press activities to Gertz's influence.<sup>159</sup>

### GERTZ'S IMAGE MANAGEMENT

Gertz's 1965 memoir, *A Handful of Clients*, was a pivotal step in his efforts to use his work for Leopold as the springboard to a broader reputation, and an important source for understanding the reputation he wanted to have. Gertz idolized Clarence Darrow, and had a soft spot for comparisons between himself and his idol; indeed, the

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<sup>155</sup> NL to EG, 15 Mar. 1960, LLC at NWU, box 29, folder 1.

<sup>156</sup> Visitors Heard On Behalf of Nathan Leopold, 11 July 1961.

<sup>157</sup> "Leopold Rehabilitation Plan Spurs ban of Death Penalty—Gertz," *Lerner Newspapers*, 1 Sep. 1971.

<sup>158</sup> NL to EG, 1 Aug. 1959, LLC at NWU, box 28, folder 2.

<sup>159</sup> AG Ballenger to NL, 14 Apr. 1965, NFL at CHM, box 2, folder 26.

chance to follow in Darrow's footsteps might well have been one of the reasons Gertz was attracted to Leopold's case in the first place.<sup>160</sup> *A Handful of Clients* (1965) was essentially Gertz's effort to show how he followed Darrow's legal philosophy by taking underdog cases that let him defend important social and legal principles as well as specific clients. In his introduction – in which he quoted Darrow to explain his own professional philosophy – Gertz wrote of his conviction that, in the hands of dedicated, morally driven lawyers, the law could be an instrument for the betterment of humanity.<sup>161</sup> The case studies from his practice around which the memoir centered were all illustrations of how Gertz used his legal acumen to fight on behalf of his clients, society, and justice, all of whose interests were intertwined.

Leopold's case study received by far the greatest attention. Gertz dedicated all of part I, "The Crime of the Century," more than half the book, to his work for Leopold (a fact Leopold did not care for), and Leopold was the only client Gertz wrote about in depth in his introduction.<sup>162</sup> He called Leopold's various legal initiatives "a study of the sins and virtues of modern criminology, an inquiry into the very nature of justice and the human spirit."<sup>163</sup> In the book, as in the media campaign for Leopold's parole, Gertz portrayed Leopold's release as a matter of justice and validation for a reformed man, and for the very principles on which parole operated.

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<sup>160</sup> Gertz's first direct contact with Leopold, in fact, was a letter asking Leopold to contribute to an exhibit Gertz was working on for the centennial of Darrow's birth in 1957. Leopold, knowing of Gertz's fondness for Darrow, once wrote Gertz a letter describing the similarities between Gertz and Darrow, and that if Gertz could secure Leopold's parole, he "[would] have succeeded in the seemingly impossible task of bringing Mr. Darrow's efforts of 30 years ago to the only conclusion which can give them significance." Gertz later quoted the letter at length in *A Handful of Clients*. Gertz himself once mentioned, somewhat gratuitously, that someone on the parole board had compared him to Clarence Darrow. Gertz, *HOC*, 8; NL, quoted in *HOC*, 48-49; EG to NL, 13 June 1958, LLC at NWU, box 27, folder 3.

<sup>161</sup> Gertz, *HOC*, xiii - xv.

<sup>162</sup> Gertz, "Part I: The Crime of the Century," *HOC*, 3-192; NL to RN, 29 May 1965, NFL at CHM, box 15, folder 24.

<sup>163</sup> Gertz, *HOC*, xiii.

But during the media campaign, Gertz had to convey his messages and present his image as a lawyer piecemeal, in numerous individual statements and interviews. In *A Handful of Clients*, Gertz could convey Leopold's parole as a comprehensive narrative, specifically a courtroom drama in which the parole board substituted for the judge, jury, and prosecutors. The story began when Gertz first met Leopold, and concluded with Leopold's discharge from parole in 1963, a happy ending that affirmed the ability of any criminal to reform, the state's willingness to recognize that, and the consequent worthlessness of the death penalty.<sup>164</sup>

Gertz's final chapter on Leopold was "The *Compulsion* Story." Gertz had said little of the suit in public during since he filed it in late 1959. But with the 1964 judicial order in Leopold's favor, he was ready to write about the suit as the final episode in his work for Leopold. He portrayed it as a service to his client, who "if we won... would no longer have to fear the shocking excesses of fiction writers and sensationalists."<sup>165</sup> But, as with the enlargement of the importance of Leopold's parole during the media campaign, Gertz thought a victory for Leopold would have broader repercussions:

It seems to me that the *Compulsion* suit is, in some respects, as important for its social implications as the freeing of Nathan Leopold. It may set precedents of lasting force and value. Freedom means more than being out of prison. It means the right to live one's life with the same inherent and unrestricted rights as all other men—the hallowed privileges of privacy, freedom from defamation, and protection against the appropriation of one's name, likeness, life-story, and personality.<sup>166</sup>

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<sup>164</sup> On the significance Gertz attached to Leopold's parole: Gertz, *HOC*, 147-148.

<sup>165</sup> Gertz, *HOC*, 149-193; 150.

<sup>166</sup> Gertz, *HOC*, 150.

Gertz called the 1964 ruling in Leopold's favor a "landmark decision."<sup>167</sup>

Leopold thought Gertz was self-aggrandizing in the book to the point of occasional inaccuracy. He accused Gertz, though not to his face, of a "tendency to arrogate for himself the lion's share of every decision and every victory." In particular, Leopold thought Gertz unfairly minimized Harold Gordon's work as Gertz's co-counsel on the *Compulsion* lawsuit.<sup>168</sup> Leopold did not mention it, but Gertz was also selective about the information he included as well as how he conveyed it. He made no mention of the failed attempt to get Leopold an early discharge, and he treated the 1964 ruling in Leopold's favor in the *Compulsion* suit as an established, irrefutable legal victory, even though the case was in fact working its way through the appeals process that eventually led Gertz's side to defeat.<sup>169</sup>

In part II, "Other Clients, Other Causes," Gertz tried to demonstrate the same principle of legal activism through other aspects of his practice.<sup>170</sup> In representing novelist Henry Miller and the publishers of *Tropic of Cancer*, especially, Gertz found a fitting successor to his work for Leopold. It was another case involving a famous client, with another chance to stand up for a principle. The legal issues at stake in Miller's case, however, were different enough from Leopold's that Gertz could widen the scope of his public legal activism even as he tried to replicate the personal successes he found during the parole campaign. In 1961, police in Chicago, among other places, were confiscating copies of *Tropic of Cancer*, and arresting some booksellers who carried it, on the grounds that the book was obscene. Miller and his

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<sup>167</sup> Gertz, *HOC*, 188.

<sup>168</sup> NL to RN, 29 May 1965, NFL at CHM, box 15, folder 24.

<sup>169</sup> Gertz did allude to the failed attempt to get Leopold an early discharge in *To Life*, p. 192. Hal Higdon to Roy Porter, 15 Mar. 1975, HH at CHM, box 3, folder 1.

<sup>170</sup> Gertz, *HOC*, part II, "Other Clients, Other Causes," 195-366.

publisher hired Gertz to help protect the novel, an endeavor that consumed the next three years. (In 1964, the Supreme Court of the United States ruled in a different case that the book constituted protected speech, bringing an indirect but favorable end to Gertz's litigation.) Gertz's work on the case allowed him to evidence his convictions, and also his prowess, as a "militant advocate of the fullest freedom of the press." In his discussions of his personal relationship with Miller, Gertz articulated how a desire to stand up for a legal and moral principle turned into a personal friendship with his famous client, the same way it had with Leopold.<sup>171</sup>

*Handful of Clients* marked the beginning of a new literary ambition in Gertz. He had published a book before going to work for Leopold, an authorized biography of writer Frank Harris co-written with a man named AI Tobin and published thirty-four years before *A Handful of Clients*.<sup>172</sup> After *Handful*, Gertz became far more prolific, and he continued the legal activism narrative he first articulated there.<sup>173</sup> He wrote little about Leopold between *Handful*'s publication and Leopold's death, but the two men remained very close friends, and Leopold continued to rely on Gertz for help with relatively mundane matters like taxes and estate planning.<sup>174</sup> Still, except for the definitive loss of the *Compulsion* suit, which Gertz would not have wanted to publicize, there was little new to his work for Leopold from 1965-1971 about which

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<sup>171</sup> Gertz, *HOC*, 229-303, quote from p. 229.

<sup>172</sup> Elmer Gertz and AI Tobin, *Frank Harris: A Study in Black and White*, (Chicago: Madelaine Mendelsohn, 1931).

<sup>173</sup> Most notably, in his 1968 book, *Moment of Madness*, Gertz tried applying the narrative to a chronicle of his work on only one case, the appeals of Jack Ruby's death sentence for the murder of Lee Harvey Oswald. He also co-edited a collection of his correspondence with Henry Miller in 1978; Elmer Gertz, *Moment of Madness: The People vs. Jack Ruby*, (Chicago: Follett, 1968); Henry Miller and Elmer Gertz, *Henry Miller: Years of Trial and Triumph, 1962-1964: The Correspondence of Henry Miller and Elmer Gertz*, edited by Elmer Gertz and Felice Lewis, (Carbondale: Southern Illinois UP, 1978). A listing of Gertz's books can be found the "biographical note" to his papers at the Library of Congress. <http://www.loc.gov/rr/mss/text/gertz.html>.

<sup>174</sup> EG to SL, 28 Apr. 1958, LLC at NWU, box 27, folder 1.

Gertz could write. Gertz focused instead on his other, more current cases to keep his image thriving.

GERTZ'S CUSTODIANSHIP OF LEOPOLD'S IMAGE AND HAL HIGDON'S  
CRIME OF THE CENTURY (1975)

With Leopold's death in 1971, Gertz entered the third phase of his relationship with the Leopold-Loeb case, in which he tried to become the arbiter of Leopold's legacy, and to guarantee himself a prominent place within that legacy. In addition to his own efforts to sell writings on his work for Leopold, Gertz became gatekeeper to materials on the case to which researchers would want access, and used that power to help shape other authors' writings on the case. Per Leopold's wishes, his personal papers at the Chicago History Museum (CHM) were under seal until five years after his death.<sup>175</sup> Gertz had donated his materials on the case to Northwestern University with a similar condition, but he could waive that restriction for certain individuals if he so chose, a prerogative that he began using after Leopold's death.<sup>176</sup> Over the years that Gertz knew Leopold – between his correspondence with Leopold directly, and his service sending letters on Leopold's behalf while Leopold was in prison – Gertz had acquired the largest collection of letters to and from Leopold outside of the restricted CHM collection. And since Gertz claimed to control Leopold's copyrights, he could offer researchers permission to read and quote from those letters, as well as Leopold's published writings, before the CHM papers became open.<sup>177</sup> Gertz's own work papers were also an invaluable resource for researchers of the case, “in some

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<sup>175</sup> NL to Clement Silvestro, 4 Dec. 1970, box 1, folder 2.

<sup>176</sup> Gertz's papers were to remain sealed until after the deaths of Nathan Leopold, Trudi Leopold, Samuel Lebold, and Gertz himself; EG to Alan Weber, 6 Aug. 1964, LLC at NWU, box 35, folder 1.

<sup>177</sup> LLC at NWU, box 43, folders 3 and 4.

respects,” Gertz wrote to one prospective researcher, “more important than [Leopold’s].”<sup>178</sup> Over the course of his work on the parole campaign and the *Compulsion* suit, Gertz had collected massive amounts of material about Leopold’s crime, family and acquaintances, activities in prison, and relationship with Loeb. Gertz also owned what was, in the 1970s, one of the very few surviving transcripts of Leopold and Loeb’s sentencing hearing, a *sine qua non* of any thorough exploration of 1924. In sum, in the early 1970s, the path to primary research on the Leopold-Loeb case ran right through Elmer Gertz.

Gertz’s role as custodian of the research materials – and his intent, through them, to be custodian of the case’s legacy – brought him into early involvement in the construction of what became the definitive history of the Leopold-Loeb case to that time, and possibly ever, Hal Higdon’s *The Crime of the Century* (1975). Gertz, in point of fact, became involved with the project even before Higdon did, back when a *Daily News* reporter named Jim Singer was working on the book; Higdon initially came onto Singer’s project as Singer’s coauthor, and took over the project as sole author after Singer dropped out.<sup>179</sup> Throughout both Singer and Higdon’s work on the book, especially Higdon’s, Gertz offered a cooperation that bordered on officiousness. He gave permission for Higdon to quote “any reasonable amount from Leopold’s writings,” tried to help Higdon find other material on the case, and even sent Higdon materials on copyright law to help assuage Higdon’s fears that Trudi Leopold might sue.<sup>180</sup> Gertz was clearly hoping that the book would place his own

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<sup>178</sup> EG to John Moreau, 27 Jan. 1972, LLC at NWU, box 41, folder 4.

<sup>179</sup> HH to EG, 29 Aug. 1974; HH to Trudi Leopold, 12 Nov. 1974, HH at CHM, box 3, folder 3.

<sup>180</sup> Quoted in HH to EG, 9 Mar. 1975, HH at CHM, box 3, folder 1; NFL at CHM, box 3, folders 1 and 3. EG to HH, 17 Dec. 1974, HH at CHM, box 3, folder 3.

victories at the center of the Leopold-Loeb narrative, and set the trend for other authors to do the same. After Higdon's book came out, Gertz even recommended that Higdon donate his research materials to Northwestern so that they, combined with Gertz's collection, could become a central repository for future researchers.<sup>181</sup> Higdon opted to donate his papers to the Chicago History Museum instead, so that they could be alongside Leopold's.

The problems between Higdon and Gertz arose when Higdon began sending Gertz drafts of the portions of the book that concerned Gertz's representation of Leopold. Multiple times, Higdon complained to others associated with the book that Gertz wanted the book to give him and Clarence Darrow equal attention.<sup>182</sup> As evidence that Gertz was seeking aggrandizement, Higdon cited a passage from Gertz's comments on the manuscript chapter about the parole campaign: "I am wondering about your handling of the proceedings to get Leopold out of prison. The success was due to a vast effort on my part. This should have been apparent to you."<sup>183</sup> In another letter, Gertz explained to Higdon that "I feel that I can ask these [revisions] because the material I placed at the disposal of Jim Singer and you are undoubtedly the most important material with which you have worked." Gertz then tried, somewhat belatedly in the relationship, to establish editorial control on the basis of his power over the research material: "I will not withhold consent if these minimal demands of mine are met."<sup>184</sup>

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<sup>181</sup> EG to HH, 20 Dec. 1975, HH at CHM, box 3, folder 1.

<sup>182</sup> HH to Walter Minton, 15 Mar. 1975. HH to Roy [Porter], 15 Mar. 1975. HH to Roy [Porter], 16 Apr. 1975; HH at CHM, box 3, folder 1.

<sup>183</sup> EG, quoted in HH to Roy [Porter], 15 Mar. 1975, HH at CHM, box 3, folder 1. The original statement from Gertz was likely made in a missing letter from March 13, 1975. There is a note from Higdon in HH at CHM indicating the letter's existence as well as its misplacement.

<sup>184</sup> HH to Gertz, 17 Mar. 1975, HH at CHM, box 3, folder 1.



Gertz and Higdon remained cordial, but their relationship never recovered from their rift over the book's content. Higdon sent another pertinent chapter to Gertz for fact-checking, but he refused to let Gertz see the full manuscript and advised his publishers to do the same. He feared its focus on the crime would further anger Gertz, both for its great attention to Leopold's worst act and, consequently, its light attention to Gertz. Higdon was probably right, since Gertz's reaction to the chapter Higdon sent about *Compulsion* left Gertz "deeply disappointed, hurt and concerned."<sup>185</sup> Higdon expressed to Gertz a willingness to adjust anything factually inaccurate, but refused to change his interpretations.<sup>186</sup> Privately, Higdon began talking to his editors about various steps that they could take to legally protect the book. Higdon was fairly confident that he was on strong legal ground, but Meyer Levin's experience with *Compulsion* made him a little gun shy.<sup>187</sup> Although the final judgment in the case legally vindicated Levin, the suit had mired Levin in litigation, scared publishers off of reprinting *Compulsion* for more than decade, and collectively cost the various defendants around \$40,000 in legal fees.<sup>188</sup>

While Higdon was dealing with Gertz for permission to use Leopold's writings, both men were dealing with Trudi Leopold's claims that Leopold's copyrights, and thus control of his legacy, were rightfully hers. Only two months before he died, Leopold had signed a new will giving Gertz control over most of his estate as a trust, with instructions that Gertz was to administer the trust so as to take

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<sup>185</sup> EG to HH, 15 Apr. 1975, HH at CHM, box 3, folder 1.

<sup>186</sup> HH to EG, 16 Apr. 1975, HH at CHM, box 3, folder 1.

<sup>187</sup> HH to Roy Porter, 16 Apr. 1975, HH at CHM, box 3, folder 1.

<sup>188</sup> Simon Baatz, *For the Thrill of It*, (New York: Harper Collins, 2008), 445-446; Higdon, *Crime of the Century*, 331.

care of Trudi as he saw fit.<sup>189</sup> Gertz relied on these powers for his assertions of his own right to administer Leopold's copyrights, and he was probably legally right, but Trudi had no intention of acquiescing to Higdon's project or to Gertz's cooperation with it.

Trudi's response to Nathan's death had been the near opposite of Gertz's, at least initially. The morning after Leopold died, she announced, "the Leopold story is finished," and refused to cooperate with any news stories on the grounds that it was Leopold's final wish that there be no further publicity attached to him after his death.<sup>190</sup> And when, after Gertz was unable to sell his own article about Leopold, he tried to entice Trudi into cooperating with him on a feature with the argument "that a sympathetic article in *Readers Digest* in which the theme of rehabilitation is stressed will be the greatest monument any of us can create to the memory of Nathan," Trudi refused.<sup>191</sup> A few months later, Gertz implied to a third party that Trudi had agreed to do the *Readers Digest* feature, but it does not seem to have come to pass.<sup>192</sup>

True to her earlier position on explorations of her husband's case, Trudi opposed Higdon's book from the beginning. In May, 1973, she responded to the news that Gertz was cooperating with Jim Singer by writing that "it was my husband's wish that there be no further publicity after his death...Mr. Gertz was fully aware of this and I consider it unspeakable and unethical that he would make available to you papers [including Leopold's will, which Gertz had used to evidence his control of

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<sup>189</sup> Nathan Leopold, Will, 23 June 1971, NFL at CHM, box 1, folder 3, pp. 5-8.

<sup>190</sup> Richard Cohen, "Nathan Leopold: Life of Atonement," *Washington Post*, 31 Aug. 1971.

<sup>191</sup> EG to Trudi Leopold, 10 Sep. 1971, LLC at NWU, box 36, folder 4.

<sup>192</sup> EG to Sarah McCort, 8 Oct. 1971, LLC at NWU, box 41, folder 3.

Leopold's copyrights] that were privileged information...What price publicity!"<sup>193</sup>

She closed with a threat of litigation against the publishers of the book if it went to press. Gertz, unfazed, reassured Singer that "the letter is, of course, outrageous, but she takes careful handling."<sup>194</sup>

Evidently she took more careful handling than Gertz managed. Two years later, as *Crime of the Century* approached publication with Higdon as author, Trudi reaffirmed to Higdon that the book was completely unauthorized by her, "and unless you and your prospective publisher, G.P. Putnam, are prepared to spend the better part of the next several years in a San Juan courtroom, you best be very careful and circumspect about what you write about me or my late husband."<sup>195</sup> By 1975, however, Trudi was no longer repeating her determination that the case should receive no publicity at all, and with good reason: about two months later, Gertz learned that Trudi was working on a book of her own.<sup>196</sup> Rumor had it the title would be "I Married a Murderer?"<sup>197</sup>

In the end, Higdon published *Crime of The Century* without making the changes Gertz demanded or obtaining Trudi's approval. He did, however, use quotations from *Life Plus 99* and Leopold's letters, for which he thanked Gertz in his acknowledgements. It is unclear whether Gertz ever reaffirmed his permission for Higdon to cite the materials, or whether Higdon had simply relied on the permission Gertz gave in December 1974, before Gertz and Higdon had come into conflict. Either way, Gertz held fast to his position that the book was riddled with errors. He

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<sup>193</sup> Trudi Leopold to Jim Singer, 23 May 1973, HH at CHM, box 3, folder 1.

<sup>194</sup> EG to Jim Singer, 29 May 1973, LLC at NWU, box 41, folder 4, p 1.

<sup>195</sup> Trudi Leopold to HH, 7 Apr. 1975, HH at CHM, box 3, folder 1.

<sup>196</sup> EG to Paul Magadan, 19 June 1974, LLC at NWU, box 41, folder 5, p. 1.

<sup>197</sup> HH, notes on interview with Abel Brown, HH at CHS, box 2, folder 7.

summarized his feelings about the finished product – and possibly validated Higdon’s reluctance to share the full manuscript with him – when he lamented, “I can’t help feeling that I could have added much to the book, had I seen the manuscript early enough.” Gertz thought that he might be asked to write a review of the book, but acknowledged that “the most qualified are not always asked.”<sup>198</sup> Higdon admitted to mixed feelings about the prospect.<sup>199</sup>

#### ELMER GERTZ, RONALD MARTINETTI, TRUDI LEOPOLD, AND THE LAST ATTEMPT TO CONTROL NATHAN LEOPOLD’S LEGACY

As Gertz was becoming disillusioned with Higdon’s work in March, 1975, he began shifting his hopes towards another journalist working on a book about Leopold, Ronald Martinetti. Martinetti had already secured Trudi Leopold’s cooperation as coauthor on the project. Trudi’s primary contribution was her willingness to grant Martinetti an exclusive reversal of her public silence in numerous extended interviews.<sup>200</sup> Martinetti was responsible for the rest of the book, conducting extensive research and interviews to supplement the information Trudi provided, as well as doing the actual writing. He was also Gertz’s contact on the project. Gertz and Trudi had grown estranged by that point, in part over Nathan’s will, and did not communicate much directly.<sup>201</sup>

Gertz had feared the worst when he first learned that Trudi was working on a book, and with good reason.<sup>202</sup> Trudi and Nathan’s marriage had never been ideal –

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<sup>198</sup> EG to HH, 8 July 1975, HH at CHM, box 3, folder 1.

<sup>199</sup> HH to EG, 11 July 1975, HH at CHM, box 3, folder 1.

<sup>200</sup> Ronald Martinetti [RM] to EG, 12 July 1975, LLC at NWU, box 41, folder 6.

<sup>201</sup> Trudi Leopold, “Elmer Gertz,” in RM to EG, 14 Mar. 1977, and EG to RM, 1 May 1977, in Elmer Gertz’s papers at the Library of Congress, Manuscript Division [EG at LOC], box 477, folder 7.

<sup>202</sup> EG to Paul Magadan, 19 June 1974, LLC at NWU, box 41, folder 5.

Nathan had admitted to Gertz that he did not love her even before he decided to propose – and by the time Nathan’s health began to decline it was falling apart.<sup>203</sup> In April and May 1971, respectively, Trudi and Nathan each told someone they were considering divorce.<sup>204</sup> Trudi accused Leopold of having been a lifelong homosexual who carried on affairs in both Stateville and Puerto Rico, including throughout their marriage and often with Paul Henry, the former prisoner whose inability to move to Puerto Rico on parole in 1962 prompted Leopold to write the strongly worded letter to Gertz.<sup>205</sup> Leopold, for his part, went beyond words in his animosity towards Trudi. In June, only two months before he died and one month after he claimed to be considering divorce, Leopold rewrote his will. In the new version, Leopold upped the money he planned to leave to Paul Henry from \$5,000 to \$10,000, and gave Gertz greater control over administration of the estate. Gertz’s role as executor was what allowed Gertz to claim control over Leopold’s copyrights and, therefore, over other writers’ abilities to use Leopold’s materials.<sup>206</sup>

There was, however, very little Gertz could do about whatever Trudi chose to say about Leopold, hence his anxiety when he learned Trudi was working on a book. Leopold had built the normality narrative in part on the idea that his sexual development was arrested during his relationship with Loeb, and that his maturation away from it was an important step in his rehabilitation. A book from his wife denouncing their marriage as a sham and alleging that “he isn’t one bit different than he was in 1924” would have devastated Leopold’s image of acquired heterosexuality

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<sup>203</sup> NL to EG, 21 June 1960, LLC at NWU, box 29, folder 1.

<sup>204</sup> Trudi Leopold to Elmer and Mamie Gertz, 11 Apr. 1971, LLC at NWU, box 9, folder 9; Hal Higdon notes on interview with Ralph Newman, HH at CHS, box 2, folder 7.

<sup>205</sup> Trudi Leopold to Elmer and Mamie Gertz, 11 Apr. 1971, LLC at NWU, box 9, folder 9.

<sup>206</sup> Nathan Leopold, Will, 23 June 1971, NFL at CHS, box 1, folder 3, p. 3.

and normality.<sup>207</sup> And Trudi's correspondence about the book indicates an intention to discuss Leopold's same-sex sexuality in prison and out.<sup>208</sup>

Gertz cooperated with the project nonetheless, and he continued to use whatever influence he had to try to shape portrayals of Leopold's life. After Nathan's death, Gertz had become more comfortable in speaking against his late client in minor ways. In 1974, for example, Gertz described Leopold as a racist with an "abrasiveness that remained with him to the end."<sup>209</sup> But there is no evidence Gertz would have participated in a wholesale tearing down of Leopold's image, and he tried to use his position with Martinetti to protect his late client from at least some possible damage, particularly damage of a sexual nature. When Martinetti sent Gertz excerpts of the prospective book that discussed the specifics of how Leopold and Loeb had "turned homosexual" in prison, Gertz warned Martinetti not to put too much stock in convict rumors. Similarly, when Martinetti sought out a former Stateville inmate who already turned up in Higdon's work discussing Leopold's sexual activities in prison – an inmate who was, in fact, Gertz's client – Gertz warned Martinetti that the man was not a trustworthy source.<sup>210</sup>

But Gertz's most profound influence on the project might have been subtler. In addition to helping Martinetti get in touch with other important figures for interviews, he answered reams of questions from Martinetti and provided his own perspective on many aspects of Nathan Leopold's life.<sup>211</sup> Indeed, Gertz seems to have

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<sup>207</sup> Trudi Leopold to Elmer and Mamie Gertz, 11 Apr. 1971, LLC at NWU, box 9, folder 9.

<sup>208</sup> Louise Spall to Trudi Leopold, 21 Feb. 1976, EG at LOC, box 477, folder 8.

<sup>209</sup> Gertz, *To Life*, 198, 195.

<sup>210</sup> EG to RM, 17 Jan. 1976, EG at LOC, box 177, folder 6. The former inmate was Gene Lovitz, upon whom Higdon drew for pages 306-309 of *Crime of the Century*.

<sup>211</sup> LLC at NWU, box 41, folder 5.

become a more important source on the book than Trudi. In the late 1970s, when Trudi informally withdrew from the project while Martinetti continued to pursue it independently, Gertz's influence became all the greater.<sup>212</sup> Gertz had learned from his experience with Higdon, and when he let Martinetti have access to his collection at Northwestern, Gertz made it clear that he was not granting Martinetti the kind of blanket permission to use the collection that Higdon had enjoyed. Instead, Gertz stipulated "specific use of any portion of it will depend on such portions being submitted to me for my approval," which would have given him important leverage over Martinetti's content.<sup>213</sup> As it happened, Gertz probably did not need it; his relationship with Martinetti was extremely cordial, and grew into a close friendship that spanned twenty years. Throughout that friendship, Gertz, who had initially been concerned about the project, continually encouraged Martinetti and often expressed the hope that eventually the book would be published.<sup>214</sup>

If Martinetti's book had been published, it would probably have competed with Higdon's in defining Nathan Leopold's life story. Moreover, Martinetti's book might have turned out to be the product that Nathan had pursued so doggedly for more than a decade before he died: an account of the life Leopold built for himself after the Franks murder. Where Higdon sought out a dispassionate narrative of events based primarily on documentary evidence, Martinetti could have constructed a more intimate, insider-driven biographical narrative. Leopold would not have appreciated the book's discussion of his sex life with men in and possibly out of prison, but

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<sup>212</sup> EG at LOC, box 477, folder 6-12 and box 478, folders 1-6, *passim*. For a specific conflict between Gertz and Trudi, see Trudi Leopold, "Elmer Gertz," in RM to EG, 14 Mar. 1977, and EG to RM, 1 May 1977, in EG at LOC, box 477, folder 7.

<sup>213</sup> EG to RM, 21 Mar. 1975, HH at CHS, box 3, folder 1.

<sup>214</sup> EG at LOC, box 477, folder 6-12 and box 478, folders 1-7, *passim*.

Martinetti's narrative, unlike the normality narrative, might not have presumed that a transformation to exclusive heterosexuality was a *sine qua non* of Leopold's rehabilitation. Martinetti claimed that the book would focus on the last thirteen years of Leopold's life, the time that Nathan most wanted emphasized in prospective biographical and autobiographical portraits.<sup>215</sup> If Martinetti had produced a book that discussed both Leopold's same-sex sexuality and his rehabilitation as coetaneous, it would have been a substantial challenge to homoprejudicial presumptions of the Leopold-Loeb narrative, and at a particularly important time in the shaping of historical understandings of the case.

In the end, it did not matter. The posthumous book on Leopold's life after prison died on the vine, the same way that Nathan's own projects had. Trudi began suffering from health problems in 1978, and she and Martinetti drifted apart.<sup>216</sup> Martinetti continued to pursue the book on his own, but ran into trouble with his publishers.<sup>217</sup> He kept after the project for at least a decade, but it was never published.<sup>218</sup> As a result, Higdon's *Crime of the Century* was the first and, for more than thirty years after its publication, the only, monograph on the Leopold-Loeb case. It was also, in some ways, the embodiment of Nathan Leopold's worst fears.

#### CONCLUSION – HIGDON'S *CRIME OF THE CENTURY* AND THE LEOPOLD-LOEB CASE AS HISTORY

In an interview after *Crime of the Century*'s release, Higdon acknowledged having developed a personal hatred for Leopold and Loeb: "It is impossible to go

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<sup>215</sup> RM to EG, 23 May 1975, LLC at NWU, box 41, folder 6.

<sup>216</sup> EG at LOC, box 477, folders 8, 10; RM to EG, n.d. July 1980, EG at LOC, box 144, folder 12.

<sup>217</sup> RM to Julie Houston, 14 July 1980, EG at LOC box 477, folder 12.

<sup>218</sup> EG at LOC, box 478, folder 5.



over the accounts of what they did and the documents in the court hearing and do anything but despise them for their arrogance, their total lack of morality, and their wanton disregard for human life.” Even worse for Leopold’s image, however, was the blunt disdain Higdon expressed for Leopold’s rehabilitation narrative. He characterized the perception of Loeb as the Franks murder’s sole instigator as a self-serving invention of Leopold’s, and charged that contrary to Leopold’s image as “the classic case of prison rehabilitation,...prison didn’t rehabilitate Leopold; it merely released him.”<sup>219</sup>

None of this vitriol, however, found its way into *Crime of the Century*, where Higdon took a tone of journalistic detachment that added to the credibility of his assertions and complemented his diligent research. For fifty years, writers had offered opinions and tried to extrapolate the case’s meaning with little apparent scrutiny of any source material. Higdon based his work on historical documents and personal interviews, and emphasized a narrative of events over an interpretation of their significance. He was more interested in actions than motives or psychology (although he did devote much attention to the alienists’ work), and he wrote about Leopold and Loeb as human beings instead of symbols. His approach created a sense that, if his final portrait was unflattering to anyone, it was only because the facts were.

Higdon returned the emphasis of Leopold-Loeb to the 1924 crime and its aftermath. The newspapers had done the same in their coverage of Leopold’s death, but Higdon, doing so in a book that surveyed the whole of Leopold’s life, cemented the Franks murder as the central feature of Leopold’s legacy. Higdon devoted more

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<sup>219</sup> Interview with Hal Higdon (unclear publication info or interviewer identity), LLC at NWU, box 41, folder 8.

than 250 of the book's 350 pages to events surrounding the murder and sentencing hearing. The rest of Leopold and Loeb's lives – including Loeb's murder, Leopold's life in stir, the parole campaign, and Leopold's life after prison – took up seventy. Leopold and his allies had been trying to shift the focus towards Leopold's life after the murder for twenty years by the time *Crime of the Century* came out. Higdon undid much of their progress in one stroke, reminding people of the basic, horrible event that had always underlay the public fascination with Leopold.

Higdon eschewed the normality narrative's premise that Leopold had become a different man from the teenager who murdered Robert Franks. He did not speak against the sincerity of Leopold's professed motives in *Crime of the Century*, and he recognized Leopold's accomplishments in prison as those of a "singular individual, one who might be described as a Renaissance Man." But, in discussing things like Leopold's participation in the malaria experiment or his work for the Brethren Service Project, Higdon described self-interest and image management as among Leopold's motives too. Sometimes Higdon's characterizations were even less flattering, as with his assertion that *Compulsion* suit stemmed from the fact that "Leopold seemed obsessed with the notion that everyone had made money off his crime but himself." The overall effect was to show Leopold's life and personality as continuous, without rehabilitation creating a clean break in the narrative. In discussing Leopold's tendency to violate the conditions of his parole, for example, Higdon writes that "one almost wants to congratulate him in his ability to confound the parole board...But then one remembers that one reason Leopold and Loeb felt free to murder Bobby Franks was their belief that laws did not concern them."

Higdon made it clear that, whatever else Leopold became over the course of his life, he was still a murderer, and would always carry the moral burden of his crime.<sup>220</sup>

*Crime of the Century* was the last nonfictional work published on Leopold-Loeb for almost twenty years, not counting brief summaries of the case in various “true crime” and famous trials anthologies. The book succeeded, in spite of the general ebb in the public interest in the case in the 1960s and 1970s, precisely because Higdon did *not* try to connect the case to current events or to readers’ interest in broader questions of criminology and prison reform. Those connections had been the basis for the case’s popularity in the 1950s, but were also responsible for its declining popularity in the 1960s and 1970s. Higdon instead relied on the temporal distance between 1924 and 1975, and the sense of finality that Leopold’s death brought to the case, to create a comprehensive “true crime” narrative of a *historic* subject which most living people would either be unfamiliar with or no longer remember. *Crime of the Century* thus cemented the Leopold-Loeb case’s transition into history. It located the event that it studied securely in the past, something in which, now that the facts were known, there would presumably be no further developments, and whatever lessons the case had to bestow were already there, waiting to be learned or relearned.

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<sup>220</sup> Higdon, *Crime of the Century*, 304, 309, 334, 326, 337.

## CHAPTER EIGHT

### “HISTORY GONE BAD”: LEOPOLD-LOEB AND SEXUAL POLITICS AT THE TURN OF THE TWENTY- FIRST CENTURY

“Love gone mad. History gone bad.”

– Promotional tagline for the movie *Swoon* (1992)<sup>1</sup>

#### INTRODUCTION

Between the 1980s and the early 2000s, a new generation of fictional adaptations of Leopold-Loeb came out. The new fictionalizations cemented key elements of the post World War II era characterizations of the sexuality of the case as historical facts in popular perceptions. What were, in the 1950s, alterations of the case’s narrative made in a very homoprejudicially charged historical context and according to the needs of various contributors to the narrative’s discourse, including Nathan Leopold, became for a new generation established elements of the 1924 event. At the same time, the case became deeply embroiled in and colored by turn-of-the-twenty-first-century sexual politics, acquiring a new importance as a historical precedent for understanding same-sex sexuality. The combined result was to perpetuate Leopold and Loeb’s status as examples of the “Queer Killer” that scholar Jordan Schildcrout describes. Long after the homoprejudice that drove the reshaping of the Leopold-Loeb narrative in the 1940s and 1950s, the narrative itself continued

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<sup>1</sup> Insert for *Swoon*, directed by Tom Kalin, (1992; United States: Strand, 2004), DVD.

to provide anecdotal evidence of the connections between same-sex sexuality and violence.<sup>2</sup>

Ironically, the reestablishment of Leopold and Loeb as prototypical gay killers came about in large part because of artists who sought to use the case to make affirming sexual political statements. The new generation of fictionalizations embraced Leopold and Loeb's sexuality in order appropriate them into what one historian terms the "self-conscious history of homoerotic love."<sup>3</sup> Since 1924, and even more so since the 1950s, Leopold and Loeb's sexual relationship had existed in popular and psychiatric perceptions as evidence of Nathan Leopold's weakness and psychological maladjustment. The portrayals that started in the 1980s challenged those characterizations by portraying Leopold and Loeb's relationship as being based in affection, from Leopold and in some cases from Loeb as well.

The new generation of Leopold-Loeb fictionalizations did not, however, seek to extricate Leopold and Loeb's relationship from the murder that made it famous. Artists who sought to challenge homoprejudice contested *the way* that same-sex sexuality factored into Robert Franks's murder, but in doing unquestioningly accepted that sexuality *did* somehow factor into the murder, rather than being an incidental trait in the two men who committed it. And the new fictional adaptations romanticized Leopold and Loeb's relationship just as the notion that same-sex relationships were inherently unsatisfactory and abnormal was gaining new importance in counterarguments against the gay rights movement. The perception of

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<sup>2</sup> Jordan Schildcrout, "Queer Justice: The Retrials of Leopold and Loeb," *Journal of American Culture* 34, no. 2 (June 2011): 175-176.

<sup>3</sup> Paula Fass, "Making and Remaking an Event: the Leopold and Loeb Case in American Culture," *Journal of American History* 80, no. 3 (Dec. 1993): 942.

Leopold and Loeb as an example of homoerotic love helped to nurture perceptions that homoerotic relationships were toxic. Moreover, while the fictionalizations of the 1980s, 1990s, and 2000s aimed to challenge the prejudiced history that drove earlier interpretations of the case, in doing so they inadvertently showed how entrenched selected perceptions from the postwar era had become in the case.

The new fictionalizations echoed key elements of Nathan Leopold and/or Meyer Levin's portrayals of the emotional and psychological dimensions of Leopold and Loeb's relationship and how it led to Robert Franks's murder. In the new fictionalizations, Leopold is not compelled to the murder by self-loathing in the new fictionalizations, as he is in Levin's *Compulsion*, and his sexuality does not serve as a cue for condemnation from the audience. But Leopold's sexuality still draws him into a dependence on Loeb that leads the former to the murder in a manner very similar to Leopold and Levin's respective narratives of the crime in the 1950s. The dynamic had become a part of the case's history, something so commonly accepted as to pass by unquestioned.<sup>4</sup>

#### LEOPOLD-LOEB AND GAY LIBERATION MOVEMENTS SINCE WORLD WAR II

The key to the Leopold-Loeb narrative's position in the late twentieth and early twenty-first centuries lay in the combination of cultural and political contests that accompanied the emergence of the modern American gay rights movement. The same increased concern with homosexuality during and after World War II that had such strong implications for perceptions of Leopold-Loeb was intertwined with an increasingly visible and assertive gay community within the United States. World

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<sup>4</sup> Meyer Levin, *Compulsion* (New York: Simon and Schuster, 1956),

War II was, according to historians Estelle Freedman and John D’Emilio, “a national ‘coming out’ experience.” The geographic mobility and the increased presence of same-sex institutions brought on by the war “created substantially new erotic opportunities that promoted the articulation of a gay identity and the rapid growth of a gay subculture.”<sup>5</sup> By the 1950s, this subculture had developed sufficiently to support the rise of the homophile movement, a collection of national organizations and local chapters that aimed to rebut the prejudices of the postwar domestic consensus and secure increased political and social rights for gays and lesbians.<sup>6</sup>

The homophile movement of the 1950s had little directly to do with the renewed interest in Leopold-Loeb in the 1950s. In *Sexual Politics, Sexual Communities* (1983), D’Emilio argues that after radical and politically aggressive beginnings, much of the 1950s gay rights movement shifted towards comparatively conservative rhetoric and goals, focusing on presenting same-sex sexuality in the least threatening way possible to 1950s society.<sup>7</sup> According to D’Emilio, “by persuading gay men and women of the importance of conformity and by minimizing the differences between homosexuality and heterosexuality, the ... organizations expected to diffuse social hostility as a prelude to changes in law and public policy.”<sup>8</sup>

The associations among the Robert Franks murder, homosexuality, and sexual psychopathology in many news accounts, and in the wave of postwar

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<sup>5</sup> John D’Emilio and Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (New York: Harper and Row, 1988), 288-289.

<sup>6</sup> For a fuller discussion of the homophile movement and its organizations, see John D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* (Chicago: U of Chicago P, 1983).

<sup>7</sup> D’Emilio, *Sexual Politics*, 75-91.

<sup>8</sup> D’Emilio, *Sexual Politics*, 109. D’Emilio was referring here to the homophile organizations The Mattachine Society and the Daughters of Bilitis. Another organization, ONE, Inc., remained more radical and aggressive in its approach. D’Emilio, 108-109.

fictionalizations, were exactly the sorts of representation of homosexuality that these homophile societies sought to shed. Meanwhile, Leopold's media campaign for parole, and the fictional adaptations of Leopold-Loeb that coincided with it, did not challenge the predominant homophobia of 1950s society. Leopold used the normality narrative to show that the antipathy towards homosexuality should not apply *to him* because he was not homosexual, but in doing so he tacitly reinforced the idea that homosexuals deserved that antipathy. Similarly, Levin's novel *Compulsion* argued for tolerance of homosexuality as a pathology, but still viewed it as pathological.

The Leopold-Loeb case merged with a newly assertive gay rights movement following several decades of changes that led gay rights activists to an increased concern with directly rebutting negative portrayals of same-sex relationships.<sup>9</sup> Following the 1969 uprising at the Stonewall Inn in New York and drawing from the tactics of other reform movements, gay rights organizations became larger, more visible, and more politically militant throughout the 1970s.<sup>10</sup> The conjunction of identity, sexuality, and politics catalyzed with the rise of the AIDS crisis in the 1980s. Historian Jennifer Brier argues that "people reacting to the emergent AIDS epidemic...inserted sexuality into the public sphere at a moment when the state did everything it could to avoid the subject," creating a critical opportunity for sexual political activism. The inadequate response of the Reagan administration to AIDS compelled gays, among other activists, to articulate an alternate political vision to the

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<sup>9</sup> Tom Kalin, *Swoon* (United States: American Playhouse, 1992), 82 min.

<sup>10</sup> D'Emilo and Freedman, 301-325



conservatism of the 1980s, while the toll the disease took on gay communities galvanized many people towards activism on a national scale.<sup>11</sup>

### NEVER THE SINNER (1985) AND THE BEGINNING OF THE LEOPOLD-LOEB NARRATIVE'S RETURN

As gays worked to forge a distinct place in American public life and shed perceptions of themselves as immoral or diseased, they were faced with the task of articulating alternative visions of gay identity, a process that involved reevaluating historical representations of same sex sexuality.<sup>12</sup> And as the dominant heterosexist culture's assumptions about same-sex sexuality became contested, so too did its interpretations of Leopold and Loeb. At least as early as 1972, with Parker Tyler's *Screening the Sexes*, film analysts were using Alfred Hitchcock's film *Rope* (1948) and the film version of *Compulsion* (1959) to criticize mainstream portrayals of same-sex sexuality as negative and misguided, using the historical Leopold-Loeb case to argue for the importance of freer expressions of same-sex sexuality.<sup>13</sup> By the 1980s, reviewers for general readership publications were openly discussing the sexuality of the protagonists in *Rope* (*Compulsion* was not released on home video until 1995, creating a lag in critical attention).<sup>14</sup> And in the mid-1980s, playwright John Logan

<sup>11</sup> Jennifer Brier, *Infectious Ideas: US Political Responses to the AIDS Crisis* (Chapel Hill: UNC P, 1999), 2.

<sup>12</sup> For a fuller survey of this topic, see: John Loughery, *The Other Side of Silence: Men's Lives and Gay Identities: A Twentieth Century History* (New York: Henry Holt, 1998).

<sup>13</sup> Parker Tyler, *Screening the Sexes: Homosexuality in the Movies* (New York: Holt, Rinehart, and Winston, 1972), 299.

<sup>14</sup> On *Rope*: Vincent Canby, "Hitchcock's 'Rope'" *NYT*, 3 June 1984; Tom Shales, "'Rope' with Scope," *Washington Post*, 15 Aug. 1984. Vito Russo, *The Celluloid Closet: Homosexuality in the Movies* (New York: Harper and Row, 1981), 92-94. Scholars concerned with same-sex sexuality in film also continued an interest in the case. See, for example, Thomas Waugh "Hauling an Old Corpse out of Hitchcock's Trunk: *Rope*," *The Body Politic* no. 99 (December 1983): 40. D.A. Miller, "Anal *Rope*," *Representations* no. 32 (Autumn 1990): 114-133. On *Compulsion*'s release on VHS: "Out on Video," *Christian Science Monitor* 87, no. 174 (3 Aug. 1995), 12.

pioneered the resurrection of the Leopold-Loeb fictional narrative with *Never the Sinner* (1985).<sup>15</sup>

Logan's play was the fictionalization most closely connected to the historical record of Leopold-Loeb since Meyer Levin's novel *Compulsion* in 1956. *Never the Sinner* began as a senior honors project at Northwestern University after Logan secured Elmer Gertz's permission to peruse the latter's papers at the university's special collections department. Logan singled out Gertz, who while Leopold was alive had pursued a prolonged lawsuit meant to protect Leopold's name and likeness from appropriation, as someone "without whom this play could not have been written."<sup>16</sup> Like Meyer Levin, Logan thought that he could "try to tell the true story" of the case by combining research with artistic license, inter-splicing scenes and dialogue taken directly from the documentary record with scenes that Logan created to convey his own interpretation of the crime.<sup>17</sup> Logan's determination to connect his work to the "true story" of the matter was enhanced by the fact that *Never the Sinner* was the first fictionalization of the case to use Leopold and Loeb's real names for its characters. His historical authority went so far that a 2004 documentary on the case used him as an expert, alongside Leopold-Loeb historian Hal Higdon and Clarence Darrow biographer Lila Weinberg.<sup>18</sup>

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<sup>15</sup> Logan wrote the play in 1983 as a senior at Northwestern University, where the play was produced that year. A dramatically revised version premiered commercially in 1985, which is the version studied here. John Logan, *Never the Sinner* (New York: Samuel French, 1999), 4. David Ng, "The Plot Thickens: Daniel Henning Takes Care to Make the Leopold & Loeb Case His Own," *LA Times*, 27 January 2008. Amnon Kabatchnik, *Blood on the Stage, 1975-2000: Milestone Plays of Crime, Mystery and Detection*. Lanham, MD: Scarecrow, 2010, 287.

<sup>16</sup> Logan, *Never the Sinner*, 6.

<sup>17</sup> John Logan, interviewed by John Fleming, "Provocative 'Never the Sinner' Opens Tonight at American Stage," *St. Petersburg Times* [Fla.], 20 Aug. 1999.

<sup>18</sup> Jay Shefsky, producer, *Leopold & Loeb: Love and Murder in Chicago*, Chicago Stories (Chicago: WTTW, Chicago Historical Society, 2004), DVD, 60 min.

The play contains many familiar elements of the narrative of the 1924 case. Leopold is arrogant and bookish, and also hesitant to go through with the murder, possibly out of a fear of getting caught rather than any moral qualms. Loeb is a psychopath who propels the crime forward, though he is not quite the mastermind the real Leopold made him out to be in the 1950s. They commit the murder out of misguided philosophical convictions about themselves as Supermen, and a fierce courtroom battle between Darrow and District Attorney Robert Crowe ensues after their arrest, fuelled by the psychological analyses of the defense alienists.

In Logan's interpretation, Leopold-Loeb was, at base, a love story. Underlying all of the play's events are the two young killers, chillingly indifferent to the crime they committed but still humanized by their interactions with one another. At first, Leopold is the more emotionally dependent partner, but after their arrest, when Loeb has lost everyone else in his life, he comes to recognize that he needs Leopold as well. It was, by intention, a portrayal that led the audience to identify with the two killers rather than to distance itself from them as monsters, and paved the way for future sympathetic depictions of Leopold and Loeb's sexuality.<sup>19</sup> Still, however, it relied on a distinctly abnormal sort of love, the sort that led the two people at the center of it to murder and prison.

#### *SWOON* (1992) – LEOPOLD AND LOEB'S SEXUALITY MEETS THE "NEW QUEER CINEMA" MOVEMENT

Logan's play found wide distribution and has undergone many productions since its creation, but it was Tom Kalin's movie *Swoon* in 1992 that really sparked controversy and drew renewed attention to Leopold and Loeb. A nominee for several

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<sup>19</sup> Logan, interviewed by Fleming.

Independent Spirit awards, and the winner for Best Cinematography at the Sundance Film Festival, *Swoon* was at the vanguard of the New Queer Cinema movement of the early 1990s, an effort to use film to embrace a more complex understanding of same-sex sexuality and its relationship with American Culture.<sup>20</sup> According to Michele Aarons, the film “[stood] almost alone in terms of critical attention garnered by the New Queer films.”<sup>21</sup>

In 1992, the year that Kalin released *Swoon*, the gay rights movement was at a crossroads. According to John D’Emilio, “the powerful combination of AIDS, a proliferating grassroots movement, and a politically aggressive radical right together created ‘the gay moment’ of 1992-1993. Gay and lesbian issues received unprecedented national attention, posing both great dangers and great opportunities.”<sup>22</sup> During this time, the gay rights movement met with a combination of success and frustration in politics, the law, and American society as gains were often accompanied by setbacks and backlashes.<sup>23</sup> This complex and often contradictory political environment fed into emerging divisions with the gay community over how to proceed, both in terms of the goals it should pursue and the way it should pursue them. One field of contention was over the representation of same-sex sexuality. As historian John Loughery writes, “Gay liberation and AIDS had called forth large-scale representations of a gay community, but the pictures

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<sup>20</sup> “Awards for *Swoon*,” Internet Movie Database, <http://www.imdb.com/title/tt0105508/awards>, accessed 27 Feb. 2011.

<sup>21</sup> Michele Aaron, Introduction, *New Queer Cinema: A Critical Reader*, (New Brunswick: Rutgers UP, 2004), 3-13; 8.

<sup>22</sup> John D’Emilio, “Organizational Tales: Interpreting the NGLTF story,” in John D’Emilio, William Turner, and Urvashi Vaid, *Creating Change* (New York: St. Martins, 2000), 469-486, 483.

<sup>23</sup> For a fuller discussion of this time period, see: Joe Rollins, “Beating around the Bush: Gay Rights and America’s 41<sup>st</sup> President,” and Greg Rimmerman, “A ‘Friend’ in the White House? Reflections on the Clinton Presidency,” in D’Emilio, et al, 28-42 and 29-56, respectively.

tended to be achingly uniform,” unrepresentative of the variety of experiences and backgrounds of gay men.<sup>24</sup> The New Queer Cinema movement of the 1990s arose to address that problem, and to embrace ugly or divisive aspects of gay history. NQC films, according to scholar Michele Aaron, shared a defiant attitude that eschewed both the homophobia that characterized most twentieth-century portrayals of sexuality *and* the idea that homosexuals needed to be portrayed positively. “The films are unapologetic about their characters’ faults or, rather, their crimes.” Several, including *Swoon*, went so far as to “beautify the criminal and (homo)eroticize violence” (parentheses in original).<sup>25</sup>

Kalin was very open about his desire not to perpetuate a white middle class conception of a “positive image” of homosexuality with *Swoon*.<sup>26</sup> Instead, he wanted to articulate a vision of homosexuality that was strong enough to acknowledge a terrible crime committed by two famous historical figures that were tied to the history of homosexuality. He also wanted to challenge the homoprejudicial idea that those figures’ sexualities correlated to their crime. According to one critic, the film “[marked] a new generation’s theory-based choice to dismantle oppressive history” by challenging the process through which that history took form.<sup>27</sup>

In his approach to the case’s history, Kalin viewed the fictional and nonfictional representations of the Leopold-Loeb case as conjoined, with each figuring equally in conceptualizing the case as a historical subject. Not long after

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<sup>24</sup> Loughery, 442. Brier’s *Infectious Ideas* discusses the implications of representations of American gayness and race for understanding the AIDS crisis in both a national and global context.

<sup>25</sup> Aaron, 4.

<sup>26</sup> Tom Kalin, interview by Kris Kovick, “Inside the City,” *The City: San Francisco’s Magazine* 3, no. 7 (Sep. 1992).

<sup>27</sup> Armond White, “Outing the Past,” *Film Comment* 28, no. 4 (July-Aug. 1992): 21-25.

*Swoon*'s release, he explained to a reporter that he wanted to present a bold, honest portrayal of two historical figures, but he distinguished his vision from past representations of Leopold-Loeb by comparing it to other films: "I wanted to show a homosexual couple who had pathological behaviors and not pathologize homosexuality, as both *Rope* and *Compulsion* had...Look at *Double Indemnity* [1948]...Criminally obsessed couples in films like *Double Indemnity* have never been used to condemn heterosexuality."<sup>28</sup> Critics had reevaluated earlier representations of Leopold and Loeb, and Logan had restored the Leopold-Loeb narrative with *Never the Sinner*, but *Swoon* was something different. It was an effort, literally, to rewrite the narrative of Leopold-Loeb as a historical event and turn it against the sexual constructions of *Rope* and *Compulsion*.

Kalin thus set out to accomplish two somewhat contradictory goals with *Swoon*. He wanted, on the one hand, to use his fictional film to make a statement about the historical Leopold-Loeb case and its connections to sexuality. On the other hand, he wanted to criticize the way that past films had used fiction to make statements about the historical Leopold-Loeb case, even reenacting scenes from the earlier two films in order to make the subversion clearer.<sup>29</sup>

To deconstruct the history of the case, Kalin sought to demonstrate that a heavy-handed judgmentality drove how people interpreted Leopold and Loeb's crime, their personalities, and their sexualities. The defense alienists in *Swoon*, for example, are decidedly not the preternaturally gifted technicians of the mind of Levin's postwar Neo-Freudian novel *Compulsion*. Rather, Kalin uses the doctors to demystify the

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<sup>28</sup> Kalin, interview by Kris Kovick.

<sup>29</sup> White, "Outing the Past," 22.

people who helped shape the enduring perceptions of Leopold and Loeb's crime. In one scene, for example, an alienist testifies at length, and with great sobriety, about Leopold's fondness for the smell of his pillow, an assessment originally included in the Hulbert-Bowman report.<sup>30</sup> Similarly, Kalin incorporates some of the news coverage of the case, like the phrenological analyses of Leopold and Loeb in 1924, and George's Murray's 1965 account of Loeb's 1936 death, to demonstrate how subjective and inaccurate the efforts to understand Leopold and Loeb were.

Kalin did more than any of his cinematic predecessors to explicitly connect his work to the historical Leopold-Loeb case. Building on John Logan's precedent in the play *Never the Sinner, Swoon* was the first movie adaptation to use real names for its characters, including several of the defense alienists. And, also building on Logan and, for that matter, Meyer Levin, Kalin relied heavily on research for his reconstruction of events, using the trial transcripts and materials at the Chicago Historical Society, where Nathan Leopold's personal papers reside. Some scenes, particularly those depicting court testimony and Leopold and Loeb's sessions with the alienists, come directly from the documentary record. Other scenes show motion picture footage of the real Leopold and Loeb, once with the voice of Craig Chester, the actor who played Leopold, dubbed over footage of the real Leopold. The DVD included still photographs from the historical case as a bonus feature, available in the same menu as still photographs from the film.

Kalin's own interpretation of the case was heavily sexualized, with an eye towards validating the sexual connection between Leopold and Loeb that had

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<sup>30</sup> Maureen McKernan, *The Amazing Crime and Trial of Leopold and Loeb*, with an introduction by Clarence Darrow and Walter Bachrach, 1996 reprint, (Holmes Beach, Fla.: Gaunt Inc, 1924, 1926), 120.

theretofore only been condemned by mainstream commentators and filmmakers. Except for Logan, who included dramatizations of the alienists' descriptions of Leopold, previous fictionalizations had used Leopold and Loeb's sexuality as a label, attaching it to a range of traits and activities that corresponded to same-sex activities in men. The fictionalizations did not diminish the mystique from their use of the concepts of "homosexuality" or "perversion" by going into the specifics of their characters' sexual relationship. Kalin went to the opposite extreme. He demystified Leopold and Loeb's sexuality by showing the two men in sexual contact, and then went farther, making queerness central to the film through conspicuous exaggeration. Several scenes feature people in drag, visually evoking the sexual undertones that permeated the case. In another fantastical scene, Leopold and Loeb gleefully have sex in a bed in the middle of the courtroom during their sentencing hearing, oblivious to an alienist's testimony about their sexual activities and the pathology they indicate.

Kalin's other alterations of the case were tenderer, sometimes to the point of romanticizing Leopold and Loeb's relationship. In one of the film's earliest scenes, for example, Leopold and Loeb exchange wedding rings and walk arm in arm as if down a wedding aisle. In other scene, Leopold wails with heartbreaking despair after Loeb's death, having lost the love of his life. (In a sign of Kalin's authority in reshaping the historical case, this scene was later used in a documentary as a dramatization of how Leopold might have reacted to Loeb's death.<sup>31</sup>) Kalin keeps sexuality central to Loeb's murder even as he inverts James Day's story of self-defense against an unwanted sexual advance. In Kalin's interpretation, Loeb's death was borne of violent homosexual passion, but it was *Day's* passion, the attack of a

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<sup>31</sup> Shefsky.



frustrated lover or would-be lover who covered up his crime by playing upon the widespread homophobic prejudice against his victim.

Kalin was largely successful in pushing his audience to put sexuality at the forefront of the categories people used to interpret the case. Critics differed in their assessments of film's quality and effectiveness. But they overwhelmingly recognized it as a political statement, meant, in the words of *New York Times* reviewer Janet Maslin, "to fracture any familiar notions and prejudices that have been incorporated into this much-studied story."<sup>32</sup> Peter Travers of *Rolling Stone* raved that *Swoon* was a "great film" because "it lets us view the familiar in astonishing new ways." The film's strength, Travers argued, derived from the fact that it "really nails the pathology of bigotry."<sup>33</sup>

Other reviews were less sanguine about Kalin's choice or handling of his subject matter. They found it hard to see, and did not really see the point of pursuing, a redemptive or validating statement in the lives of two men who, when the layers of speculation and prejudice were stripped from their story, were still responsible for the murder of a child. Maslin found that "in the end, 'Swoon' is more successful in taking apart this particular chapter in criminal history than in reassembling it with a clear point of view."<sup>34</sup> Armond White of *Film Comment* was perhaps the bluntest critic:

Kalin proceeds on the questionable whim that by a claiming—and validating—Leopold-Loeb's sexuality he can redeem them. But to snatch L&L's gayness whole from the jaws of bigoted history is a dangerous sentimentalization. Can a valorizing sexual politics be based on the behavior of those who cancel out their humanity? After all, the issue here should be

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<sup>32</sup> Janet Maslin, Review of *Swoon*, *NYT*, 27 Mar. 1992.

<sup>33</sup> Peter Travers, review of *Swoon*, *Rolling Stone* no. 640 (1 Oct. 1992), 72.

<sup>34</sup> Maslin.

murder, not fucking. Kalin gives L&L more than the tolerance the world withheld; he romanticizes their innocence.<sup>35</sup>

In doing so, White continued, “Kalin’s view...confounds the process of oppressed-group mythmaking by falsifying L&L’s social meaning. *Swoon* is in fact, a new false myth whose only virtue is eradication of the dominant point of view.”<sup>36</sup> Such criticisms, however, did not overturn Kalin’s characterizations, nor weaken the film’s ties to the historical case.

Kalin’s contributions to the case’s legacy were particularly problematic because, for all his emphasis on the queerness of the case, and his desire to correct what he viewed as the historical inaccuracies that surrounded it, much in *Swoon*’s portrayals of Leopold and Loeb echoed critical elements of postwar era perceptions of Leopold and Loeb’s relationship. Kalin, in seeking to understand the crime, became an adherent to his own version of the normality narrative. He relied on Leopold’s memoir, *Life Plus 99 Years* (1958) – Leopold’s most comprehensive expression of the normality narrative – in his research for *Swoon*, and after the film’s release recommended it to people interested in learning more about the case. He said at one point that “in a lot of ways, Nathan was...my point of identification in the film. He was the one who, when researching it, I...became very attached to.”<sup>37</sup> That was precisely what Leopold wanted people to feel about him in the postwar era, describing a relationship dynamic with Loeb in which Leopold’s desperation to please Loeb led to his accedence to the Franks murder.

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<sup>35</sup> White, 21.

<sup>36</sup> White, 22.

<sup>37</sup> Tom Kalin, DVD commentary on *Swoon*.

The result is a portrayal of the case that, but for its explicitness about sex as a dimension of Leopold's dependence, readily matches Leopold's own characterizations of the crime in the 1950s. Famous critic Roger Ebert noted in his review of the film that "Kalin plays [homosexuality] up, sometimes in ways that are fairly disturbing, as when he seems to linger on the ways the dominant Loeb was able to control the more submissive Leopold by using sex as a weapon." Ebert elaborated:

One imagines he [Loeb] would have been capable of the same crime in a more permissive era, or, for that matter, if he had not been homosexual at all. He is simply an evil person.

Leopold, on the other hand, is a weak one, whose relationship with Loeb is complex. Sex is a part of it. So is fear; he dreads losing the approval and friendship of this man he finds so attractive, and does what he does almost in a daze of need and apprehension. Later in a long life, he tried to redeem himself, in prison and on parole, and there was never the sense that he was as essentially evil as Loeb.<sup>38</sup>

Leopold had nurtured this perception of his crime with the normality narrative in order to argue that, having outgrown his feelings for Loeb, he had shed his criminal tendencies. And Meyer Levin's take on Leopold and Loeb's relationship in *Compulsion* was essentially the same, although Levin also credited Leopold with his own subconscious motives in committing the crime. That Ebert found it work remaking that Loeb might have been a murderer *even* "if he had not been homosexual at all" makes it all the clearer that the same could not be said of Leopold.<sup>39</sup>

Kalin did not, as Leopold and Levin did, portray Leopold as maturing past his same-sex impulses, nor did Kalin portray Leopold as needing to. But Kalin still resurrected and reinforced a perception of the relationship that was itself closely tied to the postwar homophobia he sought to overturn. Moreover, *Swoon*, in challenging

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<sup>38</sup> Roger Ebert, review of *Swoon*, *Chicago Sun-Times*, 13 Nov. 1992.

<sup>39</sup> Ebert.

*Rope and Compulsion*, enhanced both films' profiles as portrayals – albeit contested ones – of the historical Leopold and Loeb and their sexuality, further centering the discourse of the case on the terms that had come to define it in the 1950s.

### THE THEATRIC RENASCENCE OF THE LEOPOLD-LOEB NARRATIVE

In *Swoon*'s wake, fictionalizations of Leopold and Loeb underwent a renaissance reminiscent of the late 1950s, particularly on the stage. *Rope* returned in two different forms, as a revival of Patrick Hamilton's production and in a version based more on Hitchcock's film.<sup>40</sup> Logan's *Never the Sinner* continued to undergo new productions.<sup>41</sup> And numerous playwrights tried to build on Kalin's success with original productions of their own interpretations of Leopold and Loeb's story, producing a thriving off-Broadway trend of fictionalizations throughout the 1990s and 2000s.<sup>42</sup>

Individually, the influence of any of these works is debatable, but collectively they reveal a new awareness of Leopold and Loeb as symbols of same-sex sexuality. Logan revised *Never the Sinner* to focus more intensely on Leopold and Loeb's relationship and sexuality, affirming that modern fictionalizations had the advantage in uncovering the "true story" of sexuality in the crime.<sup>43</sup> George Singer's *Leopold and Loeb* (1997), according to the *New York Times*, "[focused] on the killers' convoluted and mostly unspoken sexual passions, suggesting tentatively...that in an

<sup>40</sup> On the Hamilton revival: Charles Isherwood, "2 Dilettantes Enjoy a Spot of Recreational Homicide," *NYT*, 5 Dec. 2005. On the stage adaption of the Hitchcock version: Jack Shouse, Director, *Rope*, play, The Solvang Festival Theatre, (Pacific Conservatory for the Performing Arts: Solvang: 2001); Michael Phillips, "'Rope' Comes Full Circle—Back to the Stage," *LA Times*, 29 Aug. 2001.

<sup>41</sup> D.J.R. Bruckner, "Leopold and Loeb as Everymen," *NYT* 2 Dec. 1997; Christine Dolen, "Powerful Acting Enhances Tale of 'Perfect Murder,'" *Miami Herald*, 15 May 2000; Nelson Pressley, "'Never the Sinner': A Crime of Dispassion," *Washington Post*, 24 Oct. 2006.

<sup>42</sup> For a summary of the plays based on the case in the 1990s and 2000s, see Schildcrout, 184.

<sup>43</sup> Logan, interviewed by John Fleming.

age less homophobic than the 1920's [sic], they might have been less sadistic" because they could have expressed their relationship healthfully.<sup>44</sup> Stephen Dolginoff's *Thrill Me* (2003) was, in his own words, "a two-character show, not so much about the murder but about the relationship," which focused on a dynamic of mutual manipulation and on Leopold's love for Loeb.<sup>45</sup> And Leopold appeared in Singer's play because of the iconic status he gained in part because of his sex. Like Kalin, these plays differentiated between the sexuality and the pathology of Leopold and Loeb's relationship, but they all also portrayed a same-sex infatuation that led to murder.

There was only one dissenter from the use of Leopold-Loeb to make sexual political statements. Daniel Henning, the founder of an independent theater house in Los Angeles, wrote and produced *Dickie and Babe* (2008) in response to the other adaptations, which he thought had taken too many liberties in portraying the sexuality of the case and its significance. He wanted instead to create an account of the play that recreated the events of 1924 in an almost documentary fashion, using the historical record of Leopold and Loeb's own words as much as possible. The play, which ran only two blocks away from a production of *Thrill Me* in Los Angeles, did not find a big audience, and reviewers complained that Henning's approach to the topic was too sterile.<sup>46</sup> Apparently, offering up a speculative interpretation of Leopold and Loeb's relationship was an essential part of the formula for making a successful adaption.

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<sup>44</sup> D.J.R. Bruckner, "Aftermath of a Murder: Theories on Society's Role," *NYT*, 4 June 1997.

<sup>45</sup> Stephen Dolginoff, interviewed by Lawson Taitte, *Dallas Morning News*, 3 Nov. 2006.

<sup>46</sup> David Ng, "The Plot Thickens." Terry Morgan, review of *Dickie and Babe*, *Variety*, 11 Feb. 2008.

Of all the plays, Nicky Silver's *The Agony and the Agony* (2006) provides the greatest commentary on Leopold's enduring fascination as a historical figure and a literary device. Leopold appears in modern times to speak to a playwright who is working on a play in which Leopold is a key character. Leopold emerges from the ether to stop the playwright, because he is tired of being a misunderstood, two dimensional character in stories that create a "chorus that gets louder and louder until it's a sound that *never* dies, a sound that bounces back and forth through history."<sup>47</sup> Silver's Leopold is consistently frustrated by people's determination to remember him for the murder while ignoring the other attributes of his personality that made him a real person. For all his complaints, however, Silver's Leopold is a familiar figure to anyone acquainted with the normality narrative. He explains the Franks murder by saying that "I did what I did because I was lonely! ... Because I wanted to be liked! Not by everyone. Just by someone. Someone I loved." During his time in prison, however, he discovered his own humanity as he dedicated himself to helping his fellow convicts, and remorse for the Franks murder came to consume him.<sup>48</sup>

At the turn of the twenty-first century, the narrative of Robert Franks's murder was little different from what it had been in the 1950s. Three decades after the events of 1924, Leopold had played into psychosexual thought in order to mitigate the public's opinion of the responsibility he bore for Robert Franks's murder. He saturated media with the idea that his crime was a result of a psychological maladjustment that manifested itself in his adoration for Loeb. At the same time,

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<sup>47</sup> Nicky Silver, *The Agony and the Agony* (New York: Dramatist Play Services, 2008), 40. Silver's play was originally a lab production for the Vineyard Theater in 2006, but went on to a small off-Broadway release for the general public starring a Tony award winning actress later the same year, and was published in 2008.

<sup>48</sup> Silver, 60.

criminologists, psychologists, journalists, novelists, and filmmakers had all offered their own interpretations of the crime that somehow connected sexuality to Franks's murder. Decades later, a new generation of filmmakers and playwrights sought to reexamine the sexuality of the case by portraying it without the kneejerk homophobia that characterized the postwar era, but the very idea that Leopold and Loeb's sexuality was intrinsic rather than incidental to the Franks murder reinforced a homoprejudicial legacy that went back to 1924. And the manner in which the newer fictionalizations portrayed Leopold's dependence on Loeb validated a story Leopold had created precisely to speak *to* the homophobia of the postwar era. The nuances of how the fictionalizations portrayed the dynamics of Leopold and Loeb's relationship were easily lost amid the new emphasis on same-sex sexuality in one of the most notoriously destructive relationships of the twentieth century.

#### THE LEOPOLD-LOEB NARRATIVE AND GAY RIGHTS OPPOSITION

The renewed interest in the Leopold-Loeb case, and the continuing emphasis on the sexuality of Leopold and Loeb's relationship, helped to keep alive an interpretative framework that was useful to people who held precisely the anti-homosexual viewpoints that the gay rights movement sought to challenge. The same conservative backlash that emerged in opposition to other movements for liberation and reform in the second half of the twentieth century hit the gay rights movement. As gays and lesbians became more assertive of their rights to political, social, and economic equality, they found themselves particularly frequent targets of the Christian Right. Fuelled by a tremendous upsurge in evangelical and fundamentalist Christianity starting in the 1970s, the Christian Right's adherents aimed to combat

what they saw as the increasing secularization and immorality in American life. The movement found a natural home within the New Right through the two groups' shared animosity towards the social and political developments that began in the 1960s,<sup>49</sup> and the Christian Right found its "perfect enemies" in the homosexual community.<sup>50</sup>

Gay and lesbian Americans, to be sure, were not the only group targeted by organizations like Jerry Falwell's Moral Majority or Pat Robertson's Christian Coalition. Homosexuality was one of a range of attitudes and practices – including sexual liberation, feminism, extramarital sex, teenage pregnancy, pornography, and abortion – that the Christian Right accused of triggering a supposed decline in American morals and threatening "the traditional family." But religious conservatives found a particularly effective foil in the gay rights movement, so much so that some scholars argue that the two movements formed in direct relation to one another. Both movements, after all, emerged and became assertive on roughly the same timeline, but with opposing goals. Gay and lesbian activists were trying to challenge the sexual politics of the 1950s consensus, while the religious right sought to restore those same politics to their former dominance, inclining each side to aim its rhetoric at rebutting the other's.<sup>51</sup>

Moreover, several of the formative events for both movements were highly publicized political battles with one another, such as those over the "Save Our

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<sup>49</sup> Dewey Grantham, *Recent America: The United States Since 1945*, 2<sup>nd</sup> ed. (Wheeling, Ill.: Harlan Davidson, 1998), 403; Alan Brinkley, *The Unfinished Nation: A Concise History of the American People*, 5<sup>th</sup> ed., vol. II (Boston: MacGraw-Hill, 2008), 895.

<sup>50</sup> John Gallagher and Chris Bull, *Perfect Enemies: The Religious Right, the Gay Movement, and the Politics of the 1990s* (New York: Crown, 1996).

<sup>51</sup> Gallagher and Bull. Tina Fetner, *How the Religious Right Shaped Gay and Lesbian Activism* (Minneapolis: U of Minn. P, 2008).



Children” campaign to repeal an anti-gay discrimination measure in Florida in 1978, the Briggs ballot initiative to allow schools to fire homosexual teachers in California the same year, and numerous other skirmishes over discrimination in American cities. The battles continued throughout the 1980s, as the AIDS crisis galvanized the gay community while the Christian right grew more deeply entrenched in Republican politics and adamantly fought any programs that might be perceived as legitimizing homosexuality.<sup>52</sup>

In the 1990s, as gay rights reached new levels of prominence as a social and political and issue, the two factions were locked in open combat. Conservative politico Patrick Buchanan outlined how heated and polarized the “cultural war” had become in a speech at the Republican National Convention in 1992. The speech, delivered in the same year that Kalin released *Swoon* and which John D’Emilio argues was a watershed for public awareness of gay rights issues, was subtitled “Taking Back Our Country”:

This election is about more than who gets what. It is about who we are. It is about what we believe and what we stand for as Americans. There is a religious war going on in this country. It is a cultural war, as critical to the kind of nation we shall be as the Cold War itself. For this is a war for the soul of America.<sup>53</sup>

Several times throughout the speech, Buchanan pointed to Bill Clinton and Al Gore’s support for gay rights issues as evidence of their opposition to his vision for what Americans should stand for. Like the activists he sought to rebut, Buchanan understood the argument over gay rights to be about more than legal protections for

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<sup>52</sup> D’Emilio and Freedman, “The Contemporary Political Crisis,” 344-360.

<sup>53</sup> Patrick Buchanan, “This Election is About Who We Are—Taking back Our Country,” delivered at the Republican National Convention, Houston, Tex., 17 Aug. 1992. Reprinted in *Vital Speeches of the Day* 58, no. 23 (15 Sept. 1992), 714.

people who engaged in certain sexual activities. It was a battle over the very basics of public life in America, in which Buchanan and his constituents sought to defend an exclusionary conception of national character that they based in fundamentalist Christianity (though with some appeal to members of other religions as well).<sup>54</sup>

Whatever moral and/or theological concerns might have driven its antigay agenda, the religious right was extremely adept at adjusting its arguments towards different audiences.<sup>55</sup> In trying to influence people's attitudes towards sexual practices, it found its greatest success through secular arguments. The sexual revolution of the 1960s and 1970s led to confusion and anxieties about the connections between sex, love, and emotional health, while the AIDS crisis raised fears about what kinds of sexualities were physically safe. The religious right manipulated this confusion to argue that sexual activities of which it disapproved were signs of psychological problems.<sup>56</sup>

It was there that the homoprejudicial legacy of the Leopold-Loeb case that Kalin had sought to overturn resurged, and Leopold and Loeb continued to most strongly exemplify Jordan Schildcrout's "Queer Killers." Anti-gay activists used the case as evidence that homosexuality inflicted psychological harm on the men afflicted with it, and that those men posed a threat to other members of society, especially children. In other words, the case helped to create an updated version of the 1950s homosexual sexual psychopath for a new generation's sexual politics.

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<sup>54</sup> Buchanan, 712-715.

<sup>55</sup> Cynthia Burack, *Sin, Sex, and Democracy: Antigay Rhetoric and the Christian Right* (Albany: State U of NY, 2008), 5.

<sup>56</sup> Dagmar Herzog, *Sex in Crisis, The New Sexual Revolution and the Future of American Politics* (New York: Perseus, 2008), xi-xiv.

### THE QUEER KILLERS RETURN

Historian Philip Jenkins's analysis of the social construction of serial homicide in the 1980s and 1990s provides a useful analogy for understanding Leopold and Loeb's utility for conservative heterosexism. According to Jenkins "instances of serial murder have commonly been used to stigmatize homosexuals, and thus to support conservative and actively homophobic conclusions. Such associations often emerge at times when gay rights issues are prominent in public debate," as they were in the 1980s and 1990s.<sup>57</sup> This process takes place through a phenomenon that sociologist Stuart Hall, et. al. calls "convergence." In convergence, "one kind of threat or challenge to society seems larger, more menacing, if it can be mapped together with other apparently similar phenomena – especially if by connecting one relatively harmless activity with a more threatening one, the scale of the danger implicit is made to appear more widespread and diffused." The inflation of the threat posed by the former, relatively harmless activity then justifies stronger reactions to it.<sup>58</sup>

Jenkins argues that representations of the serial killer in both nonfiction and fiction narratives from the late 1970s to the late 1990s created a convergence of homosexuality and psychopathic murder. Serial homicide is an "extreme form of dangerous and pathological predatory behavior" which "offers rich rewards in terms of claims-making. It is especially valuable in justifying 'campaigns of control,' or the expansion of legal sanction and bureaucratic power to combat or suppress a perceived

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<sup>57</sup> Philip Jenkins, *Using Murder: The Social Construction of Serial Homicide* (New York: Aldine de Gruyer, 1994), 177.

<sup>58</sup> Stuart Hall, et al., *Policing the Crisis: Mugging, The State, and Law and Order* (London: MacMillan, 1978), 226.

social evil.” The labeling of a given murderer as a “gay serial killer” therefore enhanced the threat homosexuality potentially posed by connecting it with the indisputable menace posed by the serial killer, justifying the legal and social marginalization of homosexuality. This convergence can be so effective that “even when it is not directly stated that the offenders are actively homosexual, the implication is still that homosexuality is part of a spectrum of deviant behaviors that culminate in violence and...murder.” Cultural aversion to homosexuality thus found its way into concrete legal and policy decisions based on protecting the public from violent predators.<sup>59</sup>

Leopold and Loeb were not serial murderers, but they had committed what had, by the 1990s, long been perceived as a psychopathically driven crime. And the nature of their perceived psychopathies – especially Leopold’s – were readily adaptable towards arguments that homosexuals were dangerous. Specifically, the Leopold-Loeb narrative, as it had taken shape in both fictional and nonfictional media – even including Leopold’s own autobiography of rehabilitation – served to demonstrate that sexual or romantic relationships between two men were inherently dysfunctional, and to relate that dysfunction to murder. In 1974, nonfiction writer Norman Lucas described the origins of a specific type of sexual murderer, “homicidal homosexuals”:

Research has shown that homosexuals have an intensification of all the primitive and destructive elements of sexuality which one sometimes finds in heterosexual crimes. The reason is thought to be attributable to the fact that love in which there is true regard and concern for the object of sexual desire is so much harder to achieve in homosexual relationships.

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<sup>59</sup> Jenkins, *Using Murder*, 7, 177.

...At another level, the situation is complicated by the self-hatred of the homosexual, which is then projected or displaced onto another person, whom he then feels the need to harm.<sup>60</sup>

These arguments took on a new importance in justifying the marginalization of homosexuality in the 1990s. As the national homoprejudicial consensus eroded in the culture wars of the 80s and 90s, the meaning of the word family, and the ability of gay and lesbian couples to form healthy families, became two of the most divisive issues surrounding the gay rights debate. In the 1990s, gay and lesbian activists began seeking recognition of rights – especially marriage and adoption – that would bring same-sex partners closer to legal parity with heterosexual partners, effectively granting governmental recognition to the same-sex family and greatly advancing social recognition of it. Depicting homosexuals as violently disturbed became a key tool for anti-gay liberation activists to articulate an ostensibly secular argument against these trends, a way to demonstrate social and physical harms that, if true, would have a broader appeal than explicitly religious objections.

No one exemplifies the secular tactics for religious and moral objections to homosexuality better than Paul Cameron. Cameron was one of the most prominent figures of the anti-gay rights movement. The founder and chairman of the Family Research Institute and an open advocate of biblically based social policy, Cameron gave the veneer of behavioral science to anti-homosexual platforms. He served as a scientific advisor for groups pursuing state-level anti-gay rights legislation and his research turned up in multiple arguments against increased rights or recognition for gays and lesbians. In 1993, some U.S. Army and Navy officials even circulated Cameron's work at the Pentagon to arouse opposition to Bill Clinton's softening of

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<sup>60</sup> Norman Lucas, *The Sex Killers* (London and New York: WH Allen, 1974), 141.

the ban on gays in the military. The following year, Clinton's own Justice Department cited Cameron's work in a brief seeking to rebut a lawsuit over the ban.<sup>61</sup>

Cameron laments the decline of what he sees as an ancient and, until recently, historically static view of homosexuals as unproductive members of society who "failed to accept the 'sweet yoke' of [hetero] marriage and parenthood" and who were incapable of leading virtuous lives. Under this view, gays were also "regarded as dangerous, because they preyed on the young and perverted them from normal, healthy, productive lives. In their selfish preoccupation with genital pleasure, they sought to rebel against the natural order of human life itself – the mutual responsibility of one for all that forms the basis of the social contract." In the modern era, when people have wandered away from Cameron's preferred social/religious order, "homosexuals are now more than non-productive 'sexual bums.' They are recruiting others, forming communities, beginning to mock and undermine the old pieties of loyalty to family, country, and God."<sup>62</sup>

Accounting for Cameron's perspective on homosexuality and the sexual political arenas in which he operates, the *conclusions* he draws from his statistics indicating the connections between homosexuality and violence become at least as important as the statistics themselves for understanding the ramifications of his work. Cameron sought to counteract the gay rights movement and mobilize opposition to homosexuality by reinforcing the idea that "in line with traditional psychiatric

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<sup>61</sup> Mark Pietrzyk, "Queer Science," *New Republic* 211, no. 14 (3 Oct. 1994), 10-12.

<sup>62</sup> Paul Cameron, "The Psychology of Homosexuality," Family Research Institute, posted 3 Feb. 2009, <http://www.familyresearchinst.org/2009/02/the-psychology-of-homosexuality/>, accessed 31 July 2012.

opinion, violence goes hand-in-hand with the 'gay' lifestyle."<sup>63</sup> The American Psychiatric Association ceased to classify same-sex sexuality as a mental disorder in 1973, but Cameron argues that people who fail to conform to their roles in society, "such as thieves and gays," bring a host of psychological problems upon themselves. Heavily echoing the psychosexual perceptions of mid-century behavioral experts, as well as Norman Lucas's work on Homicidal Homosexuals, Cameron writes that since "their lifestyles preclude full participation in things that 'really count' psychologically (e.g., parenthood, social honor)," gay men's and women's lives would be inherently dissatisfactory (parentheses in original). Accordingly, they would suffer from antisocial tendencies, including psychopathy.<sup>64</sup>

In order to more fully justify opposition to homosexuality, Cameron argues that it poses not just harm to the men and women who engage in same-sex sexual activities, but that they are more prone to violence than the general population and thus pose a greater threat to public safety. In one pamphlet, he determined that homosexuals were responsible for 68 percent of "sexually-tinged murders," and that homosexuals were responsible for the majority of non-serial "sexual motivation" murders as well.<sup>65</sup> Domestic abuse, HIV and deliberate infection, rape, incest, all turn up in a similar capacity, as evidence that gay and lesbian lifestyles are intrinsically dysfunctional. Every negative behavior connectible to same-sex sexuality, no matter how extreme or rare – not to mention how questionable the statistics on that behavior

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<sup>63</sup> Paul Cameron, "Violence and Homosexuality," Family Research Institute, posted 3 Feb. 2009, <http://www.familyresearchinst.org/2009/02/violence-and-homosexuality/>, accessed 7 July 2012.

<sup>64</sup> Cameron, "Psychology of Homosexuality."

<sup>65</sup> Cameron, "Violence and Homosexuality." Pietrzyk, p. 11, provides a critique in the methodology of this particular Cameron study.

– becomes part of the very definition of homosexuality.<sup>66</sup> If one accepts Cameron's arguments, his desire to move towards a legal and social policy based on the Bible thus becomes consistent with secular utilitarianism, carrying immediate consequences for understanding sexual issues.<sup>67</sup>

Cameron's methodology was and continues to be highly controversial among behavioral scientists. He has been condemned by multiple professional organizations and, depending on whom one asks, was either expelled or resigned from the American Psychological Association.<sup>68</sup> An American Sociological Association committee found that "it does not take great analytical abilities to suspect from even a cursory review of Cameron's writings that his claims have almost nothing to do with social science and that social science is used only to cover over another agenda."<sup>69</sup> To focus too heavily on Cameron's statistics, however, can distract one from the associations he creates with anecdotal evidence. The examples he cites in some of his work, such as serial killers or mass murderers, serve to connect to an entire range of

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<sup>66</sup> Cameron, "Violence and Homosexuality"; "The Psychology of Homosexuality"; "How Much Child Molestation is Homosexual?" Family Research Institute, <http://www.familyresearchinst.org/2012/01/how-much-child-molestation-is-homosexual/>, accessed 1 Aug. 2012.

<sup>67</sup> Cameron is very blunt about his belief that the Bible should inform social and public policy, even as he moves forward with his utilitarian arguments. See, for example: Paul Cameron, *The Gay Nineties: What the Empirical Evidence Reveals about Homosexuality* (Franklin, Tenn.: Adroit Press: 1993).

<sup>68</sup> The American Sociological Association passed a motion formally condemning Cameron for misrepresenting others' research and for using flawed methodologies in his own studies in 1987. The Canadian Psychological Association passed a similar resolution in 1996. Pietrzyk, 10-11; American Sociological Association, "Report of the Committee on Homosexuals in Sociology," *Footnotes* 15, no. 2 (February 1987), p.14. Canadian Psychological Association, "1996 - 1 Public Statement by Paul Cameron on Homosexuality," <http://www.cpa.ca/aboutcpa/policystatements/>, accessed 31 July 2012. For Cameron's rebuttal to some of these charges, see: Paul Cameron, "Revisiting *New Republic's* Attack on Cameron," 17 Dec. 2008, Family Research Institute, <http://www.familyresearchinst.org/category/special-reports/>, accessed 31 July 2012.

<sup>69</sup> American Sociological Association, "Report of the Committee on Homosexuals in Sociology," *Footnotes* 15, no. 2 (February 1987), p.14.



behaviors that all demonstrate the preclusion of psychological health from same-sex sexuality.

Cameron is an extreme if high profile example, but there are people who share his psychological appraisals of same-sex sexuality, albeit couched in less inflammatory rhetoric, and positions like his continue to have concrete effects on policy, both within the United States and abroad.<sup>70</sup> The perception that the psychological problems associated with homosexuality lead to self-destructive behaviors justifies opposition to anti-gay hate crime legislation, because violence is an inevitable part of the gay lifestyle.<sup>71</sup> The perception that same-sex partnerships are innately inferior to heterosexual ones justifies opposition to same-sex marriage and adoption.<sup>72</sup> Anti-gay advocates who believed that same-sex attraction *could* be treated, resisted, or cured through therapy and/or personal discipline used the supposed psychological harms of same-sex attraction as evidence that it *should* be combatted through those methods, for the subject's own good.<sup>73</sup> And finally, the perception that homosexuality corresponds to dangerous behaviors justifies drastic measures to counteract it, making it not just a matter of protecting people from the

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<sup>70</sup> New Testament scholar Thomas Schmidt, in a book arguing for greater compassion towards gays and lesbians, argues in a manner similar to Cameron that the inherent dissatisfactions of same-sex relationships, which preclude child-rearing or the emotional complementarity that comes with intersexual marriage, lead to frustration, unfulfillment, and ultimately, deep-seated psychological problems such as pedophilia. Thomas E. Schmidt *Straight & Narrow? Compassion & Clarity in the Homosexuality Debate* (Downer's Grove, Ill: InterVarsity P, 1995), 115-116. Emphasis in original. Additionally, Richard Cohen, in a book arguing for the importance of using therapy to eradicate homosexuality, invokes Cameron's statistics about the high rate of pedophilia among homosexuals. Cameron, *The Psychology of Homosexuality*. Richard Cohen, *Coming Out Straight: Understanding and Healing Homosexuality* (Winchester, Va.: Oakhill, 2000), p. 49, 252, n. 86.

<sup>71</sup> Cameron, *Violence and Homosexuality*.

<sup>72</sup> "Beliefs Drive Research Agenda of New Think Tanks," *Boston Globe*, 31 July 2005.

<sup>73</sup> Cohen, 27-28.

dangers that come from same-sex practices, but a matter of protecting society from the people who engage in those practices.<sup>74</sup>

Leopold-Loeb, as the case was shaped by popular media – both fictional and nonfictional – could provide perhaps the ultimate anecdotal evidence of the psychopathologies of same-sex couplings in men. The dynamic on which Cameron and his fellows rely – the dissatisfaction and frustration of same-sex relationships leading to psychological dysfunction and violence in gays and lesbian – goes back a long way in the Leopold-Loeb case. It echoes Lucas's description of "homicidal homosexuals" in 1974, but both are also strongly reminiscent of an assessment of Leopold-Loeb that criminologist David Abrahamsen performed in 1944 or, if one includes fiction, of Meyer Levin's psychoanalysis of Judd Steiner (Leopold) in *Compulsion* in 1956.<sup>75</sup>

The fictionalizations of the case that began in the last quarter of the twentieth century kept the dynamic going. Whatever the artistic merits of their work or its intended meaning for the sexual politics of their times, and whatever the reasons to which they attributed Leopold and Loeb's relationship, the new fictionalizations relied on the portrayal of two men whose relationship was unhealthy in ways that connected to the relationship's sexuality. To that extent, the portrayals played into the vague but discriminatory notions of the case and same-sex sexuality on which

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<sup>74</sup> Richard Cohen and his book were strong inspirations for a 2009 bill in Uganda that offered severe penalties for homosexuality, including the death penalty in certain circumstances. The bill never made it to Uganda's parliamentary floor, but as of June 2012, resurfaced in committee in a weaker form and with the death penalty provisions removed. Gay rights activists in Uganda connect the bill with a wave of aggressive anti-homosexual sentiment in the country. Jocelyn Edwards, "Uganda Anti-Gay Bill Draws Church, Donor Lines," *Reuters*, 28 June 2012, <http://www.reuters.com/article/2012/06/28/us-uganda-gays-idUSBRE85R0XR20120628>

<sup>75</sup> David Abrahamsen, *Crime and the Human Mind* (New York: Columbia UP, 1944), 167; Levin, *Compulsion*, novel, 486-489.

opponents of the gay rights movement relied, and helped those notions to spread more widely. The case was rarely invoked as direct evidence of the innate dangers of homosexuality in contemporary arguments. Rather, it sat in the cultural background, making the idea of Lucas's "homicidal homosexuals" feel familiar even to people who were not seeking to make arguments against same-sex sexuality.

### CONCLUSION – THE LEOPOLD-LOEB NARRATIVE CONTINUES

In April 2002, *Murder by Numbers*, a film by Barbet Schroeder, came out in US theaters and demonstrated that the midcentury constructions of Leopold and Loeb that Tom Kalin had sought to overturn with *Swoon* were still thriving ten years later.<sup>76</sup> A major studio production, *Murder by Numbers* grossed more than 30 million dollars. It was a disappointing figure considering the film's budget, but still enough to easily dwarf the 340 thousand *Swoon* pulled in as an independent film.<sup>77</sup>

Schroeder's film was strongly reminiscent of Leopold's normality narrative and the midcentury fictionalizations, particularly the 1959 movie version of *Compulsion*. Justin, played by Michael Pitt, is the Leopold character: highly intelligent but lonely and socially awkward, he takes comfort in Nietzschean theories of superior people who exist above the law. Richard, the Loeb character, is popular, charismatic, handsome, and a complete psychopath whose air of nonchalant entitlement conceals a genuine inability to feel empathy or remorse. The two young men plan and carry out the perfect murder together as part of a gruesome intellectual

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<sup>76</sup> Barbet Schroeder, *Murder by Numbers*, 120 minutes, (United States: Castle Rock Entertainment, 2002), film.

<sup>77</sup> "Murder by Numbers Box Office / Business," Internet Movie Database, <http://www.imdb.com/title/tt0264935/business>, accessed 23 Oct. 2012; "Swoon Box Office / Business," Internet Movie Database, <http://www.imdb.com/title/tt0105508/business>, 23 Oct. 2012.

exercise. Justin participates in the crime despite his reservations in order to prove himself Richard's equal, but afterwards he feels remorse for his actions. Richard, in contrast, is unrepentant, and thinks only of protecting himself. The movie even adopted the device –used by Leopold in *Life Plus 99 Years* and in all of the versions of *Compulsion* – of having Justin begin a relationship with a young woman between the murder and his arrest. The brief courtship gives him a glimpse of what his life could have been like if he had formed a healthy, heterosexual relationship with her before falling in with Richard, but the revelation but comes too late to save him from his psychological problems.

Reviewers were quick to pick up on three defining elements of *Murder By Numbers*: that it was based on the 1924 Leopold-Loeb case, that it came from a cinematic tradition of films based on Leopold-Loeb, and that it spoke to the same concerns about youth, psychology, and crime as the midcentury fictionalizations. Many reviewers specifically noted the homoerotic undertones between the two teenaged antagonists but attached little significance to them. *Variety's* reviewer characterized “The obvious latent homoerotic nature of the relationship [as] superficially present, but not in a way that is at all meaningful or interesting.”<sup>78</sup> What film scholar D.A. Miller had called the conspicuous construction of a “homosexuality of no importance” in Hitchcock's 1948 film *Rope* was alive and well in the new millennium. Leopold and Loeb remained, in their fictional guises, two homosexuals who committed a murder.

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<sup>78</sup> Todd McCarthy, “Bullock Hits Target in By-the-Numbers Mystery,” *Variety* 386, no. 9 (15 Apr. 2002). 29, 34.

Over the course of the past ninety years, the phrase “Leopold and Loeb” has acquired a power of signification over a particular type of crime or criminal, a thrill killing whose perpetration was inexplicable but for the psychological problems of its two *homosexual* (or at least homoerotically connected) perpetrators. The notion of the Leopold-Loeb style murder as connected to – and somehow a product of – same-sex sexuality became a familiar and, to most people, unquestioned concept. And, consciously or unconsciously, that concept continuously informed how people perceived and ordered events. The case became an anecdotal contribution to the more general perception that same-sex sexuality was abnormal, and perhaps dangerous.

The process began in 1924. Two overindulged teenagers from wealthy families confessed to an utterly pointless murder, and the legal effort to spare their lives secured the case as an enduring sensation with important dimensions for understanding psychology, youth, and crime. In 1924, however, the case’s relevance was established but not yet fully defined. The comprehensive information about their lives that the press and psychiatric experts exposed had not yet been classified and prioritized according to their relevance for the crime.

In later decades, starting with Richard Loeb’s murder in 1936, Leopold and Loeb’s sexualities, and the sexuality of their relationship, gained emphasis as explanatory for Robert Franks’s murder. The myriad other elements of Leopold and Loeb’s lives and psyches that the defense alienists and the press had discussed in 1924 – youth, intellectualism, over-privilege, delinquency, psychology, and psychology – were either winnowed away or, when included, usually made subordinate elements of the crime to Leopold and Loeb’s sexualities. In the post-

world War II era, Nathan Leopold himself played to those perceptions with a very specific portrayal of his relationship with Loeb that reinforced postwar perceptions of same-sex sexuality and its relationships with murder in a manner that exonerated the middle-aged Leopold of the activities of his younger self. Leopold's story synergized with the postwar fictionalizations to recreate Leopold-Loeb as an event that demonstrated the inherent psychological harms of same-sexuality, while also making arguments about youth, parenting, and psychology.

Starting in the 1980s and continuing to the present day, the process of winnowing out or subsuming nonsexual elements of Leopold and Loeb's criminal relationship reached a kind of fruition. Leopold had tried to focus representations of his life on aspects of it he found more personally flattering than the Franks murder and his relationship with Loeb, but never succeeded in doing so. By the time Leopold, the last living principle from 1924, died in 1971, interest in the "real" case had been fading for more than a decade, and with the notable exception of Hal Higdon's history of the case in 1975 – continued to fade for more than a decade after.<sup>79</sup> When the case resurfaced in American culture in the 1980s, it was through fictional portrayals of the case that embraced and furthered the sexualization of Leopold and Loeb's crime. Sexual perceptions of the case – products of the exchanges between fiction, nonfiction, and revision that accompanied the case's return to the public spotlight three decades after Robert Franks's murder – had become validated through their repetition, and began to seem intrinsic to the 1924 event. The fictionalizations of the late twentieth and early twentieth century, to be sure, offered very different interpretations of the Leopold-Loeb narrative from the predecessors they challenged.

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<sup>79</sup> Hal Higdon, *Leopold and Loeb: The Crime of the Century* (Urbana, Ill.: U of Illinois P, 1975, 1999).

But the specific aspects and applications of the case's narrative had always been fluid, even as the narrative itself perpetuated, at its most basic level, the idea that the Leopold and Loeb demonstrated a connection between same-sex sexuality, psychological abnormality, and homicidal tendencies.

Thus, more than fifty years after Nathan Leopold's parole prompted revisions to the narrative of his crime in the postwar era, the Leopold Loeb case continues to revolve around the same issues it had in the 1950s. Much had changed in the intervening years: the gay rights movements had made many great advances; historians had come to understand that conceptualizations of the case were inherently subjective and compromised; and the psychosexual perceptions that had colored those conceptualizations came under both scholarly and lay scrutiny. But the case continued to convey the impression of connections among same-sex sexuality, abnormality, psychological dysfunction, and murder in a manner very similar to the way it had in the 1950s.

## BIBLIOGRAPHIC ESSAY

The Leopold-Loeb case is in the midst of a renaissance. Despite the substantial public interest in Leopold-Loeb throughout the twentieth century, readers seeking carefully researched and accurate secondary accounts of the case had surprisingly little available to them before Hal Higdon's *The Crime of the Century* in 1975.<sup>1</sup> Higdon's work remains perhaps the most comprehensive history of the case, but in the years since *Crime of the Century*'s publication a much wider variety of material has become available. Two books on the case came out within two years of one another, in 2007 and 2008. The latter, Simon Baatz's *For the Thrill of It*, was a major publication for popular audiences, receiving a favorable review in *The New York Times*.<sup>2</sup> Scholars have taken a new interest in Leopold-Loeb as well. Beginning with Paula Fass's "Making and Remaking an Event" in 1993, numerous historians have studied the significance of the case as a social construction. The new histories focus not just on describing the events surrounding the Franks murder, but also on analyzing how those events were shaped and given significance.<sup>3</sup>

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<sup>1</sup> Hal Higdon, *Leopold and Loeb: The Crime of the Century* (Urbana, Ill.: U of Illinois P, 1975, 1999), 348.

<sup>2</sup> John Theodore, *Evil Summer: Babe Leopold, Dickie Loeb, and the Kidnap-Murder of Bobby Franks* (Carbondale: Southern Ill. UP, 2007). Simon Baatz, *For the Thrill of It: Leopold, Loeb, and Murder that Shocked Chicago* (New York: Harper Collins, 2008). John Steele Gordon, "Murder Most Rational and Confusing," *New York Times*, 17 Aug. 2008.

<sup>3</sup> Paula Fass, "Making and Remaking an Event: the Leopold and Loeb Case in American Culture," *Journal of American History* 80, no. 3 (Dec. 1993). See also: David Churchill, "Queer Histories of a Crime, Representations and Narratives of Leopold and Loeb," *Journal of the History of Sexuality* 18, no. 2 (May 2009); Paul Franklin, "Jew Boys, Queer Boys: Rhetorics of Antisemitism and Homophobia in the Trial of Nathan 'Babe' Leopold Jr. and Richard 'Dickie' Loeb," in *Queer Theory and the Jewish Question*, ed. Daniel Boyarin, Daniel Itzkovitz, and Ann Pellegrini, (New York: Columbia UP, 2003).



There are many options available for people seeking summaries of the case that are briefer than those found in the monographs and more accessible than those offered by scholars. Magazines, anthologies, and books about Clarence Darrow's legal career offer scores of synopses of the case. Many of them are quite informative and lack – though they may perhaps comment upon – the sensationalism that characterized most of the news coverage of the case.<sup>4</sup> Leopold-Loeb has also developed a strong presence on the worldwide web. Websites vary widely in the quality of their content and in the volume of traffic they receive, but they all spread information about the case and to keep its discussion active in the public sphere.<sup>5</sup> Children's books are available to help familiarize people too young for the gory details of the crime with an important event from America's past.<sup>6</sup> Nor do interested parties need to limit themselves to the written word. In 2008, a small operation in Chicago began offering a historical walking tour of the Kenwood neighborhood where Leopold, Loeb, and Franks lived, and where the Franks abduction and murder took place.<sup>7</sup> The Chicago History Museum ran an exhibit on the case in 2004, while

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<sup>4</sup> Robert Grant and Joseph Katz, "Loeb-Leopold," in *The Great Trials of the Twenties: The Watershed Decade in America's Courtrooms* (New York: Sarpedon, 1998), 169-194. Gilbert Geis and Leigh B. Beinen, "Leopold and Loeb and the Cause of Crime," in *Crimes of the Century: From Leopold and Loeb to OJ Simpson* (Boston: Northeastern UP, 1998) 13-47. John Farrell, "Loeb and Leopold," in *Clarence Darrow: Attorney for the Damned* (New York: Doubleday, 2011), 333-360.

<sup>5</sup> See, for example: Marilyn Bardsley, "Leopold & Loeb," TruTV, accessed 10 Dec. 2012, [http://www.trutv.com/library/crime/notorious\\_murders/famous/loeb/index\\_1.html](http://www.trutv.com/library/crime/notorious_murders/famous/loeb/index_1.html); LeopoldandLoeb.com, accessed 20 Dec. 2012, <http://leopoldandloeb.com>; "Leopold and Loeb Trial," American Experience, PBS.org, accessed 20 Dec. 2012, [http://www.pbs.org/wgbh/amex/monkeytrial/peopleevents/e\\_leopoldloeb.html](http://www.pbs.org/wgbh/amex/monkeytrial/peopleevents/e_leopoldloeb.html).

<sup>6</sup> Simone Payment, *The Trial of Leopold and Loeb: A Primary Source Account*, Great Trials of the Twentieth Century (New York: Rosen Publishing Group, 2004); Andy Koopman, *Leopold and Loeb: Teen Killers*, Famous Trials Series (San Diego: Lucent, 2004).

<sup>7</sup> Paul Durica, guide, "Crime of the Century: Leopold & Loeb and the Murder of Bobby Franks," Pocket Guide to Hell Tours, May 24, 2009.

Northwestern University did the same in 2009.<sup>8</sup> The History Channel produced a documentary on the criminal duo in 1998.<sup>9</sup>

The new wave of publications on the historical case, and those publications' reliance on research, derives to a great extent from the increased availability of primary sources. Most importantly, the transcript of the 1924 sentencing hearing, once all but impossible to access, is now readily available. Amazingly, before the 1970s, the Leopold family held a virtual monopoly on access to the transcript. The official record had been lost, stolen, or destroyed, but the Leopold family possessed Clarence Darrow's copy, and guarded it closely. At midcentury, that copy came into the hands of Elmer Gertz, Leopold's attorney, who then put a copy of his own in the papers on the case he donated to Northwestern University.<sup>10</sup> The Gertz donation has since become the source text for numerous researchers, beginning with Hal Higdon, and has been copied or put on the web – in whole or in part – by multiple parties.<sup>11</sup> Northwestern's web site on the case also offers photos of key evidence, and full PDFs of Leopold's and Loeb's confessions and the Hulbert-Bowman Report on each

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<sup>8</sup> "Leopold-Loeb Exhibit: The 'Perfect' Crime," *Windy City Times*, 5 May 2004. Leopold and Loeb Exhibit at Northwestern University," *Chicago Tribune*, 13 June 2009.

<sup>9</sup> Christopher Meindl, *Born Killers: Leopold & Loeb*, In Search of History (United States: History Channel, Triage Entertainment, 1998), 45 min.

<sup>10</sup> Higdon, 346-347.

<sup>11</sup> Another copy of the transcript now resides in Gertz's papers at the Library of Congress, and Robert Bergstrom obtained a copy from Gertz while representing Twentieth Century Fox during Leopold's lawsuit over the film *Compulsion*. Bergstrom later donated his copy to the Newberry Library. The World Trials Library has digitized the transcript for subscribers to HeinOnline, and the Famous American Trials website offers significant excerpts on its Leopold and Loeb page. *People of the State of Illinois versus Nathan Leopold Jr. and Richard Loeb*, Sentencing Hearing Transcript, 23 July-10 September 1924, accessible via HeinOnline. "Illinois v. Nathan Leopold and Richard Loeb," Famous American Trials, accessed 20 Dec. 2012, <http://law2.umkc.edu/faculty/projects/ftrials/leoploeb/leopold.htm>. Elmer Gertz Collection at the Library of Congress, boxes 119-120. Robert W. Bergstrom Papers, Midwest Manuscript Collection, Newberry Library, Chicago, folders 2-28.

offender, so aspiring Leopold-Loeb buffs can now perform primary research without needing to travel to archives or subscribe to scholarly databases.<sup>12</sup>

While the increased availability of these materials has improved the documentary accuracy of explorations of the case, it has also encouraged a certain level of homogeneity in popular narratives of it. Many of the print and electronic summaries of the case do not vary much from a summary Francis Busch offered in 1952, and continue to emphasize much the same points that the news press did in 1924: the shocking nature of the crime, the youth and privilege of its perpetrators, and the courtroom drama that centered on the psychiatric defense and Clarence Darrow's closing argument.<sup>13</sup> That most secondary sources concentrate on the same few documents that their predecessors have, and that accessing that pool of documents has gotten much easier, makes this tendency all the harder to break away from.

Secondary accounts of the case also tend to focus on the 1924 crime and sentencing hearing as discrete and static events. Too often, these accounts discuss the fictionalizations of the case and developments subsequent to Leopold and Loeb's sentencing only to the extent that those developments help to wrap up the story of 1924. Higdon, in the first secondary book on the case in 1975, provides the greatest depth of material on events occurring after 1924, covering Leopold and Loeb's lives after their sentencing for 70 pages, or just under 20 percent of the total book – far

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<sup>12</sup> "Leopold and Loeb in the University Archives." Northwestern University, accessed 15 Dec. 2012. <http://www.library.northwestern.edu/libraries-collections/evanston-campus/university-archives/digital-collections-and-exhibits/leopold>.

<sup>13</sup> Francis X. Busch, "The Trial of Richard Loeb and Nathaniel Leopold for the Murder of Robert ("Bobbie") Franks (1924)," in *Prisoners at the Bar, an Account of the Trials of: the William Haywood Case, the Sacco-Vanzetti Case, the Loeb-Leopold Case; the Bruno Hauptmann Case*, 1998 ed, Notable American Trials Series (Buffalo, New York: William S Hein & Co., 1952, 1998): 145-199.

more than any of the subsequent histories of the case.<sup>14</sup> (By comparison: out of 450 pages, Simon Baatz's 2009 book devotes only 41 to events after Leopold and Loeb's sentencing.<sup>15</sup>) Even Paula Fass and David Churchill, the two scholars who most directly approach the case as a cultural construction that changes over time, take a somewhat limited approach. They end their studies in the 1950s, and analyze the case's relationship with fiction only to the extent that the relationship illuminates that time period.<sup>16</sup>

The tendency to focus on the 1924 historical event and the elements that made it famous is only natural; those were, after all, what made the case a *cause célèbre* and laid the foundation for its continuing discourse. Focusing too heavily on the 1924 event, however, obscures the full legacy of the case throughout the twentieth century. The events of 1924 began the discourse of the Leopold-Loeb narrative, but the discourse has been a continuous process. The 1924 event has been conceptualized and applied different ways at different times, and to focus so heavily only on the moment of its genesis is to ignore both that process and its consequences.

As a complement to the increased scholarly work on the historical case, film and drama scholars have been studying Leopold-Loeb's life in fiction as well, but their work tends toward the opposite problem. Beginning with DA Miller's "Anal Rope" (1990), scholars who focus on the fictional works the case inspired have done so without sufficient attention to the historical discourse from which those works are inextricable. Alfred Hitchcock's *Rope* (1948) has received the bulk of the attention

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<sup>14</sup> Higdon, 271-343.

<sup>15</sup> Baatz, 410-451.

<sup>16</sup> Fass also mentions Tom Kalin's *Swoon*, but as reinforcement for her point about the relationship between fact and fiction in the 1950s. Fass, 950; Tom Kalin, *Swoon*, 82 minutes (United States: American Playhouse, 1992).

because of the fame of its director, but both *Rope* and *Compulsion* (1959) have become prominent sources in the study of the portrayal of same-sex sexuality in film.<sup>17</sup> Numerous books on the subject cite one or both movies now almost as a matter of form, and some authors have given the works more focused analyses.<sup>18</sup> But, while popular critics and film and drama scholars often note that the movies and plays they study are based on the historical Leopold-Loeb case and its subjects, the scholars do not then explore the importance of that fact in any depth. Even critics who focus on the significance of the ways that fictional adaptations portray the sexuality and the psychology of the main characters nonetheless largely ignore how those representations relate to the true-life discourse of the case, and therefore miss the full range of the representations' influence beyond any one particular work or medium.

Leopold-Loeb scholarship is beginning to take some broader approaches. In 2009, Von Pittman focused on Leopold's life after the Franks murder with an article on the Stateville Correspondence School.<sup>19</sup> Jordan Schildcrout studies fictionalizations across a range of media and time periods in direct relation to the

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<sup>17</sup> Alfred Hitchcock, *Rope*, 80 minutes (United States: Warner Brothers, 1948), film; Richard Fleischer, *Compulsion*, 103 minutes, (United States: 20<sup>th</sup> Century Fox, 1959), film.

<sup>18</sup> Miller's "Anal Rope" (1990) studies the sexual subtexts of Hitchcock's 1948 film in an article that became an early text in the development of Queer Theory. Amy Lawrence studies the same film in relation to issues of sexuality and masculinity in the postwar era. And in 2011, Jordan Schildcrout studies the *Rope* and *Compulsion* films in conjunction with the spate of Leopold-Loeb plays that began with John Logan's *Never the Sinner* (1985), analyzing how the fictionalizations contribute to perceptions of the connection between homosexuality and violence. DA Miller, "Anal Rope," *Representations* 32 (autumn 1990). Amy Lawrence, "Jimmy Stewart is Being Beaten: Rope and the Postwar Crisis in American Masculinity," *Quarterly Review of Film and Video* 16, no. 1 (May 1997). Jordan Schildcrout, "Queer Justice: The Retrials of Leopold and Loeb," *Journal of American Culture* 34, no. 2 (June 2011).

<sup>19</sup> Von Pittman, "Correspondence Study and the 'Crime of the Century': Helen Williams, Nathan Leopold, and the Stateville Correspondence School," *Vitae Scholasticae* 26, no. 2 (1 September 2009): 5-28.

true-life case.<sup>20</sup> His work, as well as Fass and Churchill's studies of the historical case, indicates a new awareness of Leopold-Loeb's continuously shifting role in defining same-sex sexuality since the case's inception. And finally, legal scholar Edward Larson synthesizes the study of the historical case and its fictional representations, though his approach is more descriptive than analytical.<sup>21</sup>

Still, before this project there has never been a holistic study of the discourse of the Leopold-Loeb narrative in American life, nor one that incorporates the full extent to which Nathan Leopold and his allies actively shaped that discourse. When I first began researching this dissertation, I anticipated spending perhaps a chapter on Leopold and Loeb's lives after their sentencing. The rest of the dissertation would have analyzed portrayals of Leopold and Loeb in film and fiction – and how those portrayals changed over time – with relatively little regard for either man's contemporary activities. I had assumed that, by the time of Leopold-Loeb's postwar-era resurgence as a topic of popular fascination, the two men had largely ceased direct influence on the ways in which their crime was portrayed. Loeb was dead and Leopold had, I thought, become an object rather than a subject; what people said *about* him mattered far more than anything he said for himself.

Instead, after my first of several trips to peruse Leopold's personal papers at the Chicago History Museum's Research Center, and the papers of Elmer Gertz, Leopold's attorney in the 1950s, at the Deering-McCormick Library of Special Collections at Northwestern University, I discovered that Leopold and Gertz were key

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<sup>20</sup> Jordan Schildcrout, "Queer Justice: The Retrials of Leopold and Loeb," *Journal of American Culture* 34, no. 2 (June 2011).

<sup>21</sup> Edward Larson, "American Tragedy: Retelling the Leopold-Loeb Story in Popular Culture," *American Journal of Legal History* 50, no. 2 (April 2008-2010).

figures in shaping the case's discourse in the postwar era and beyond. These document collections are a remarkable and – except for materials pertaining directly to 1924 – a largely underused resource for historians of the case. They have been formative for my own work; I rely heavily on them for fully half of this project, and they do much to contextualize developments in the remaining chapters.

Leopold and Gertz were enthusiastic record keepers who anticipated a public interest in their papers. They saved most of their correspondence, not just with each other, but also with an incredible range of people connected to the case or its representation in fiction and nonfiction, and kept carbon copies or typescripts of most of their outgoing letters. Their collections also contain extensive personal papers, documents related to Gertz's work as Leopold's lawyer, drafts of public statements, and press clippings from newspapers all over the country.<sup>22</sup> Leopold's files span from his arrival in prison in 1924 to his death in 1971, but are most voluminous from 1952–1971. In the 1950s, he received permission from his warden to send and receive much more correspondence than his fellow prisoners. The dispensation continued until Leopold's parole in 1958, after which his correspondence was unfettered.<sup>23</sup> The 1950s were also when Elmer Gertz became Leopold's attorney, and began amassing his own collection of documents relating to the case. Gertz had some documents from or pertaining to times before the 1950s, but as with Leopold, his papers pertaining to events from the 1950s to the 1970s are by far the most comprehensive.<sup>24</sup>

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<sup>22</sup> Nathan F. Leopold Collection at the Chicago History Museum (NFL at CHM); The Leopold-Loeb Collection at Northwestern University.

<sup>23</sup> Elmer Gertz, *A Handful of Clients* (Chicago: Follett, 1965), 113.

<sup>24</sup> The Elmer Gertz Collection at the Library of Congress has a far larger collection of Gertz's papers, but less material on Leopold-Loeb. For historians of the case, the LOC collection's greatest strengths are its material from Gertz's activities regarding the case after the mid-1970s, which is where the Northwestern collection stops. The LOC collection also holds a copy of the 1924 sentencing hearing

Most of the extant literature on the historical case, if it discusses this time period at all, treats it as the moment when the case transitioned into fiction and the case's living participants ceased their influence. Gertz's and Leopold's manuscripts, along with numerous other sources (see bibliography), reveal a much deeper and more enduring continuity throughout the various representations and explorations of the Leopold-Loeb case. Each development in the case's conceptualization is inseparable from its predecessors and inextricable from representations of the case in other genres and media, yet until now no one has traced the process holistically. Using these sources to bridge the space between the representations of the case before midcentury and the representations after it, I trace the modern renaissance of the Leopold-Loeb case in American culture as the product of a process that has been ongoing since 1924.

I also rely on the archival sources to keep my exploration of this process grounded as much as possible in individual, concrete human actions. It is easy, in studying an event's discussion in multiple media and genres over such a wide chronological scope, to focus on large cultural shifts and abstractions. But every development in the case's discourse, while certainly shaped by its context, was also the result of choices made by individual people, beginning with the terrible murder of a fourteen-year-old boy. I have endeavored to remain mindful of that reality throughout this project

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transcript and psychiatric reports, as well as materials from the lawsuit Leopold brought over the book, film, and stage versions of *Compulsion*. Those materials heavily duplicate materials available through either the Northwestern collection or the Bergstrom papers at the Newberry Library.



## A GUIDE TO THE KEY PEOPLE

Adams, Varian: Nathan Leopold's attorney from 1955-1957.

Bachrach, Benjamin: Assistant counsel for the defense at Leopold and Loeb's 1924 sentencing hearing. Older brother of Walter Bachrach.

Bachrach, Walter: Assistant counsel for the defense at Leopold and Loeb's 1924 sentencing hearing. Younger brother of Benjamin Bachrach.

Ballenger, AG "Bal": Cousin of Nathan F. Leopold.

Bergstrom, Robert: Attorney for Twentieth Century Fox Studios and Richard and Darryl Zanuck in Leopold's lawsuit over the *Compulsion* franchise.

Bookwalter, John: Member, Illinois State Parole and Pardon Board.

Bowman, Karl: Psychiatric expert for the defense in 1924. He did not testify, but was coauthor of the Hulbert-Bowman report on Nathan Leopold and Richard Loeb.

Brown, Abel: Lifelong friend of Nathan Leopold.

Caverly, John: Presiding judge at Leopold and Loeb's 1924 sentencing hearing.

Crowe, Robert: Cook County District Attorney. Head prosecutor at Leopold and Loeb's 1924 sentencing hearing.

Day, James: Inmate of Stateville Penitentiary. Killed Richard Loeb in 1936, tried for murder and acquitted the same year.

Erickson, Gladys: A Chicago area journalist who worked very closely with both Nathan Leopold and Stateville Penitentiary Warden Joseph Ragen. Author of *Warden Ragen of Joliet* (1957).

Fleischer, Richard: Director of the 1959 film adaptation of *Compulsion*.

Franks, Jacob: Father of Robert "Bobby" Franks.

Franks, Flora: Mother of Robert "Bobby" Franks.

Franks, Robert "Bobby": 1924 murder victim of Nathan Leopold and Richard Loeb.

- Friedman, William: The Leopold/Lebold family attorney in the 1950s. He was Leopold's sole legal counsel until 1955, and through his connection with the family remained an important figure thereafter.
- Gardner, Erle Stanley: Novelist and crime writer. Wrote the introduction to Leopold's memoir, *Life Plus 99 Years* (1958).
- Glueck, Bernard: Psychiatric expert for the defense in 1924. Head of the psychiatric clinic at Sing Sing prison. He testified at the sentencing hearing.
- Gordon, Harold: Co-counsel for the plaintiff, with Elmer Gertz, in Nathan Leopold's lawsuit over the book and film *Compulsion*.
- Green, Dwight: Governor of Illinois, 1941-1949. Instructed the Illinois Parole Board to consider a sentence reduction for inmates who participated in the prison malaria experiments, including Nathan Leopold. Leopold's hearing came early in the administration of Green's successor, Adlai Stevenson.
- Hamilton, Patrick: Playwright, author of *Rope* (1929), aka *Rope's End*, adapted for the screen by Alfred Hitchcock in 1948.
- Healy, William: Psychiatric expert witness for the defense in 1924. He testified at the sentencing hearing.
- Henry, Paul (aka Paul Magadan): Nathan Leopold's cellmate, friend, and possible lover at Stateville Penitentiary. Henry moved to Puerto Rico after his release, where he retook up his relationship with Leopold.
- Higdon, Hal: Journalist and author of *Crime of the Century* (1975), the first research-based nonfiction monograph on the Leopold-Loeb case.
- Hitchcock, Alfred: Director of *Rope*, the 1948 film adaptation of Patrick Hamilton's 1929 play of the same name.
- Horner, Henry: Governor of Illinois, 1933-1940, appointed Joseph Ragen Warden of Joliet and Stateville Penitentiaries and created the Prison Inquiry Commission following the death of Richard Loeb in 1936.
- Hulbert, Harold: Endocrinologist, psychiatrist, and expert for the defense in 1924. Coauthored the Hulbert-Bowman report on Nathan Leopold and Richard Loeb for the defense, and testified at the sentencing hearing.
- Kalin, Tom: Director of the independent movie *Swoon* (1992).
- Laune, Ferris: A criminologist and the sociologist-actuary at Stateville Penitentiary.

Leopold assisted Laune with Laune's doctoral thesis, later published as *Predicting Criminality: Forecasting Behavior on Parole* (1936). Laune introduced Leopold to other criminologists.

Lebold, Foreman "Mike": The older of Nathan Leopold's two older brothers. He served as head of the Lebold family from Nathan Leopold Sr.'s death in 1929 to Foreman's own demise in 1953. Foreman changed his surname from Leopold to Lebold to avoid the notoriety Nathan Jr. had brought to the family.

Lebold, Samuel: The younger of Nathan Leopold's two older brothers. He changed his surname from Leopold to Lebold to avoid the notoriety Nathan had brought to the family.

Leopold, Foreman "Mike": see Lebold, Foreman "Mike."

Leopold, Gertrude "Trudi" Garcia de Quevada: wife of Nathan Leopold from 1961 till his death in 1971.

Leopold, Nathan Freudenthal Jr.: Murderer, with Richard Loeb, of Robert Franks in 1924. Died in 1971 in Puerto Rico.

Leopold, Nathan Freudenthal Sr.: Father of Nathan Leopold Jr. Died 1929.

Leopold, Samuel: see Lebold, Samuel.

Lerner, Leonard: Owner and operator of a large Chicago area newspaper syndicate. Friend of Elmer Gertz and close ally of Leopold's during the parole campaign. Later a member of the Illinois State Parole and Pardon Board. Father of Robert Lerner.

Lerner, Robert: Reporter for the Lerner newspaper syndicate, anti-death penalty activist, and ally of Nathan Leopold. Son of Leonard Lerner.

Levin, Meyer: Author of *Compulsion* (1956), a bestselling novel based of the Leopold-Loeb case that went on to become a play in 1957 and a feature film in 1959.

Loeb, Richard: Murderer, with Nathan Leopold Jr., of Robert Franks in 1924. Died in 1936 at Stateville Penitentiary.

Logan, John: Playwright, author of *Never the Sinner* (1985).

London, Ephraim: Attorney for Meyer Levin and the publishers of the novel *Compulsion* during Nathan Leopold's civil suit.

Lurrie, Susan: Romantic interest of Nathan Leopold in 1924, called “Connie” in *Life Plus 99 Years* and fictionalized as “Ruth” in the various versions of *Compulsion*.

Gertz, Elmer: Chicago area lawyer and author. He first went to work for Nathan Leopold in 1957, and remained Leopold’s attorney, advisor, and confidant until the latter’s death in 1971. Gertz represented Leopold in the sale of the publication rights to Leopold’s memoir, *Life Plus 99 Years*, and was deeply involved in every major legal initiative of Leopold’s life thereafter.

Magadanz, Paul: see Henry, Paul.

Martin, John Bartlow: Freelance journalist. Wrote a series about Stateville Penitentiary for *Saturday Evening Post* in 1951 and worked with Nathan Leopold on a four-part series about Leopold’s life for the same magazine in 1955. Martin and Leopold also briefly considered publishing a book together. Martin testified on Leopold’s behalf at the latter’s February 1958 parole hearing.

Martinetti, Ronald: Author and attorney who worked with Trudi Leopold and Elmer Gertz on a prospective biography of Nathan Leopold.

Murray, Don: Actor who purchased an option for the film rights to *Life Plus 99 Years*.

Newman, Ralph: Chicago area bookseller and rare manuscript dealer. He met Leopold through Leopold’s brother Foreman (“Mike”) Lebold in 1953 and became a trusted friend and advisor. He also acted as Leopold’s literary agent for the publication of *Life Plus 99 Years*.

Ragen, Joseph: Warden of Stateville Penitentiary, 1935-1941, 1942-1961. A crucial ally of Nathan Leopold’s.

Roberts, Mary-Carter: Author of the novel *Little Brother Fate* (1956).

Seldes, Timothy: Editor at Doubleday, worked with Leopold on Leopold’s memoir, *Life Plus 99 Years* (1958).

Sandburg, Carl. Poet and Abraham Lincoln biographer. Testified at Nathan Leopold’s February 1958 parole hearing.

Stevenson, Adlai: Governor of Illinois, 1949-1953. Governor when the Parole and Pardon Board recommended a reduction in Nathan Leopold’s sentence in 1949. Stevenson followed the board’s recommendation, making Leopold eligible for parole in 1953.

Stransky, Franklin: Chairman of the Illinois State Parole and Pardon Board at the time of Leopold's parole.

Stratton, William: Governor of Illinois, 1953-1961. Stratton was in office for most of Leopold's campaign for parole. Stratton's reconstruction of the Parole Board in 1953 led to Leopold's disastrous first parole hearing that year. Stratton was also governor throughout Leopold's subsequent efforts with the maturity narrative, and it was in Stratton's second term that Leopold finally received parole in 1958.

White, William Alanson: Expert psychiatric witness for the defense in 1924. At that time, the head of St. Elizabeth's Hospital in Washington, DC and president of the American Psychiatric Association. White testified at the 1924 sentencing hearing.

Yaffe, James: Author of the novel *Nothing but the Night* (1957).

Zanuck, Darryl: President of the company that produced the 1959 film adaptation of *Compulsion*.

Zanuck, Richard: Producer of the 1959 film adaptation of *Compulsion*. Son of Darryl Zanuck.

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## VITA

John Fiorini

John Carl Fiorini was born and raised in Fairfax County, Virginia. He received his BA in History from Mary Washington College in May 2002, and matriculated at the College of William and Mary as an MA student in 2003. From August 2004 to July 2005, he served a year in AmeriCorps before returning to William and Mary as a PhD student in modern American history.